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LEGISLATIVE HISTORY

Public Law 87-772
H. R. 4333

1961, H. R. 4333	House bill introduced by Mr. [Name] and passed by the House on [Date].
1961, H. R. 4333	House bill reported by the [Committee] on [Date].
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INDEX AND SUMMARY OF H. R. 4333

Feb. 2, 1961	Rep. Lindsay introduced H. R. 3779 which was referred to the House Judiciary Committee. Print of bill as introduced.
Feb. 15, 1961	Rep. Lindsay introduced H. R. 4333 which was referred to the House Judiciary Committee. Print of bill as introduced.
Aug. 24, 1961	House subcommittee voted to report H. R. 4333.
Aug. 29, 1961	House committee voted to report H. R. 4333.
Sept. 5, 1961	House committee reported H. R. 4333 with amendments. H. Report No. 1108. Print of bill and report.
Sept. 18, 1961	House passed H. R. 4333 as reported.
Sept. 19, 1961	H. R. 4333 was referred to the Senate Judiciary Committee. Print of bill as referred.
Sept. 17, 1962	Senate committee voted to report H. R. 4333 (but did not actually report).
Sept. 18, 1962	Senate committee report H. R. 4333 without amendment. S. Report No. 2107. Print of bill and report.
Sept. 24, 1962	Senate passed H. R. 4333 without amendment.
Oct. 9, 1962	Approved: Public Law 87-772.

Hearing: House hearing on H. R. 4333.

DIGEST OF PUBLIC LAW 87-772

TRADEMARK ACT AMENDMENTS. Makes a number of miscellaneous changes in the Trademark Act of 1946 so as to clarify the meaning of several provisions relating to details of registration, administrative and court procedure, internal organization of the Patent Office regarding trademark matters, and refinement of language considered to be desirable.

87TH CONGRESS
1ST SESSION

H. R. 3779

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1961

Mr. LINDSAY introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of international conventions, and for other purposes", approved July 5, 1946, as amended.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That paragraph (1) of subsection (a) of section 1 of the
4 Act entitled "An Act to provide for the registration and pro-
5 tection of trademarks used in commerce, to carry out the
6 provisions of international conventions, and for other pur-
7 poses", approved July 5, 1946 (60 Stat. 427), as amended,
8 is amended by striking the words "as might be calculated to
9 deceive" and inserting in lieu thereof "as to be likely, when

1 applied to the goods of such other person, to cause confusion,
2 or to cause mistake, or to deceive"; and by striking the
3 words "or services" from the proviso thereof.

4 SEC. 2. Subsection (d) of section 2 is amended by strik-
5 ing the language beginning with the word "confusion", first
6 appearance, and ending with the word "herewith" at the end
7 of said subsection and inserting in lieu thereof the following:
8 "confusion, or to cause mistake, or to deceive: *Provided,*
9 That when the Commissioner determines that confusion, mis-
10 take, or deception is not likely to result from the continued
11 use by more than one person of the same or similar marks
12 under conditions and limitations as to the mode or place of
13 use of the marks or the goods in connection with which such
14 marks are used, concurrent registrations may be issued to
15 such persons when they have become entitled to use such
16 marks as a result of their concurrent lawful use in commerce
17 prior to (i) the earliest of the filing dates of the applications
18 pending under this Act; or (ii) the date of a registration
19 granted under this Act; or (iii) July 5, 1947, in the case of
20 registrations previously issued under the Act of March 3,
21 1881, or February 20, 1905, and continuing in full force
22 and effect on that date; or (iv) July 5, 1947, in the case
23 of applications filed under the Act of February 20, 1905,
24 and registered after July 5, 1947. Concurrent registrations
25 may also be issued by the Commissioner when a court of com-

1 petent jurisdiction has finally determined that more than one
2 person is entitled to use the same or similar marks in com-
3 merce. In issuing concurrent registrations, the Commis-
4 sioner shall prescribe conditions and limitations as to the mode
5 or place of use of the mark or the goods in connection with
6 which such mark is registered to the respective persons.”

7 SEC. 3. Section 6 is amended by striking the entire sec-
8 tion and inserting in lieu thereof the following:

9 “SEC. 6. (a) The Commissioner may require the appli-
10 cant to disclaim an unregistrable component of a mark
11 otherwise registrable. An applicant may voluntarily dis-
12 claim a component of a mark sought to be registered.

13 “(b) No disclaimer heretofore or hereafter made, or
14 made under paragraph (d) of section 7 of this Act, shall
15 prejudice or affect the applicant’s or registrant’s rights then
16 existing or thereafter arising in the disclaimed matter, or his
17 right of registration on another application if the disclaimed
18 matter be or shall have become distinctive of his goods or
19 services.”

20 SEC. 4. The first sentence of subsection (a) of section 7
21 is amended by striking therefrom the word “either”; by
22 striking the words “name printed” and inserting in lieu
23 thereof the words “signature placed”; by striking the words
24 “and attested by an assistant commissioner or by one of
25 the law examiners duly designated by the Commissioner,”

1 and by striking the words "and a record thereof, together
2 with printed copies of the drawing and statement of the appli-
3 cant, shall be kept in books for that purpose" and inserting
4 in lieu thereof the words " , and a record thereof shall be kept
5 in the Patent Office." The second sentence of subsection
6 (a) of section 7 is amended by striking therefrom the word
7 "certificate" and inserting the word "registration" in lieu
8 thereof; and by striking therefrom the words "the draw-
9 ing of".

10 Subsection (d) of section 7 is amended by striking the
11 entire subsection and inserting in lieu thereof the following:
12 "Upon application of the registrant the Commissioner may
13 permit any registration to be surrendered for cancellation, and
14 upon cancellation appropriate entry shall be made in the
15 records of the Patent Office. Upon application of the regis-
16 trant and payment of the prescribed fee, the Commissioner
17 for good cause may permit any registration to be amended
18 or to be disclaimed in part: *Provided*, That the amendment
19 or disclaimer does not alter materially the character of the
20 mark. Appropriate entry shall be made in the records of
21 the Patent Office and upon the certificate of registration or,
22 if said certificate is lost or destroyed, upon a certified copy
23 thereof."

24 Subsection (e) of section 7 is amended by striking the
25 words "certificates of"; by adding an "s" to the word "regis-

1 tration"; and striking the words "a chief of division" and
2 inserting in lieu thereof "an employee of the Office".

3 Subsection (f) of section 7 is amended by striking from
4 the first sentence the words ", signed by the Commissioner
5 and sealed with the seal of the Patent Office;" by striking
6 the word "certificate", second occurrence; and by striking
7 the word "certificate", third occurrence, and inserting the
8 word "registration" in lieu thereof.

9 SEC. 5. Section 9 is amended by striking the entire
10 section and inserting in lieu thereof the following:

11 "SEC. 9. (a) Each registration may be renewed for
12 periods of twenty years from the end of the expiring period
13 upon payment of the prescribed fee and the filing of a veri-
14 fied application therefor, setting forth those goods or serv-
15 ices recited in the registration on or in connection with which
16 the mark is still in use in commerce and attaching thereto
17 a specimen or facsimile showing current use of the mark, or
18 showing that any nonuse is due to special circumstances
19 which excuse such nonuse and it is not due to any intention
20 to abandon the mark. Such application may be made at any
21 time within six months before the expiration of the period
22 for which the registration was issued or renewed, or it may
23 be made within three months after such expiration on pay-
24 ment of the additional fee herein provided.

25 "(b) If the Commissioner refuses to renew the regis-

1 tration, he shall notify the registrant of his refusal and the
2 reasons therefor.

3 “(c) An applicant for renewal not domiciled in the
4 United States shall be subject to and comply with the pro-
5 visions of section 1 (d) hereof.”

6 SEC. 6. Section 10 is amended by changing the colon
7 following the word “conducted” to a period and striking the
8 words “*Provided*, That any assigned registration may be
9 canceled at any time if the registered mark is being used by,
10 or with the permission of, the assignee so as to misrepresent
11 the source of the goods or services in connection with which
12 the mark is used”; and striking the sentence “The Com-
13 missioner shall keep a separate record of such assignments
14 submitted to him for recording.” and inserting in lieu thereof
15 “A separate record of assignments submitted for recording
16 hereunder shall be maintained in the Patent Office.”

17 SEC. 7. Subsection (a) of section 12 is amended by
18 changing the period at the end thereof to a colon and in-
19 serting after the colon the following: “*Provided*, That in
20 the case of an applicant claiming concurrent use, or in the
21 case of an application to be placed in an interference as pro-
22 vided for in section 16 of this Act, the mark, if otherwise
23 registrable, may be published subject to the determination
24 of the rights of the parties to such proceedings.”

25 Subsection (c) of section 12 is amended by striking

1 therefrom the first word of the last sentence and inserting in
2 lieu thereof the words "Marks published under this".

3 SEC. 8. Section 13 is amended by striking the words
4 "notice of" each occurrence, and by adding at the end
5 thereof the following sentence: "An opposition may be
6 amended under such conditions as may be prescribed by
7 the Commissioner."

8 SEC. 9. Section 14 is amended by striking said section
9 in its entirety and inserting in lieu thereof the following:

10 "SEC. 14. A verified petition to cancel a registration of a
11 mark, stating the grounds relied upon, may, upon payment
12 of the prescribed fee, be filed by any person who believes
13 that he is or will be damaged by the registration of a mark
14 on the principal register established by this Act, or under
15 the Act or March 3, 1881, or the Act of February 20,
16 1905—

17 "(a) within five years from the date of the regis-
18 tration of the mark under this Act; or

19 "(b) within five years from the date of publication
20 under section 12 (c) hereof of a mark registered under
21 the Act of March 3, 1881, or the Act of February 20.
22 1905; or

23 "(c) at any time if the registered mark becomes
24 the common descriptive name of an article or substance,
25 or has been abandoned, or its registration was obtained

1 fraudulently or contrary to the provisions of section 4
2 or of subsections (a), (b), or (c) of section 2 of this
3 Act for a registration hereunder, or contrary to similar
4 prohibitory provisions of said prior Acts for a registra-
5 tion thereunder, or if the registered mark is being used
6 by, or with the permission of, the registrant so as to
7 misrepresent the source of the goods or services in con-
8 nection with which the mark is used; or

9 “(d) at any time if the mark is registered under
10 the Act of March 3, 1881, or the Act of February 20,
11 1905, and has not been published under the provisions
12 of subsection (c) of section 12 of this Act; or

13 “(e) at any time in the case of a certification mark
14 on the ground that the registrant (1) does not control,
15 or is not able legitimately to exercise control over, the
16 use of such mark, or (2) engages in the production or
17 marketing of any goods or services to which the certifica-
18 tion mark is applied, or (3) permits the use of the cer-
19 tification mark for purposes other than to certify, or
20 (4) discriminately refuses to certify or to continue to
21 certify the goods or services of any person who main-
22 tains the standards or conditions which such mark
23 certifies:

24 “*Provided*, That the Federal Trade Commission may apply
25 to cancel on the grounds specified in subsections (c) and (e)

1 of this section any mark registered on the principal register
2 established by this Act, and the prescribed fee shall not be
3 required.”

4 SEC. 10. Section 15 is amended by striking “(c) and
5 (d)” in the first paragraph and inserting in lieu thereof the
6 following: “(c), (d), and (e)”.

7 Section 15 is amended by striking “or trade name” from
8 paragraph numbered (4).

9 SEC. 11. Section 16 is amended by striking therefrom
10 the word “purchasers”.

11 SEC. 12. Section 21 is amended by striking the entire
12 section, and inserting in lieu thereof the following:

13 “SEC. 21. (a) (1) An applicant for registration of a
14 mark, party to an interference proceeding, party to an op-
15 position proceeding, party to an application to register as a
16 lawful concurrent user, party to a cancellation proceeding, a
17 registrant who has filed an affidavit as provided in section 8,
18 or an applicant for renewal, who is dissatisfied with the
19 decision of the Commissioner or Trademark Trial and Ap-
20 peal Board, may appeal to the United States Court of
21 Customs and Patent Appeals thereby waiving his right to
22 proceed under section 21 (b) hereof: *Provided*, That such
23 appeal shall be dismissed if any adverse party to the pro-
24 ceeding, other than the Commissioner, shall, within twenty

1 days after the appellant has filed notice of appeal according
2 to section 21 (a) (2) hereof, files notice with the Commis-
3 sioner that he elects to have all further proceedings con-
4 ducted as provided in section 21 (b) hereof. Thereupon the
5 appellant shall have thirty days thereafter within which to
6 file a civil action under said section 21 (b), in default of
7 which the decision appealed from shall govern the further
8 proceedings in the case.

9 “(2) When an appeal is taken to the United States
10 Court of Customs and Patent Appeals, the appellant shall
11 give notice thereof to the Commissioner, and shall file in the
12 Patent Office his reasons of appeal, specifically set forth in
13 writing, within such time after the date of the decision ap-
14 pealed from, not less than sixty days, as the Commissioner
15 appoints.

16 “(3) The court shall, before hearing such appeal, give
17 notice of the time and place of the hearing to the Commis-
18 sioner and the parties thereto. The Commissioner shall
19 transmit to the court certified copies of all the necessary
20 original papers and evidence in the case specified by the
21 appellant and any additional papers and evidence specified
22 by the appellee, and in an ex parte case the Commissioner
23 shall furnish the court with the grounds of the decision of
24 the Patent Office, in writing, touching all the points involved
25 by the reasons of appeal.

1 “(4) The court shall hear and determine such appeal
2 on the evidence produced before the Patent Office, and the
3 decision shall be confined to the points set forth in the reasons
4 of appeal. Upon its determination, the court shall return
5 to the Commissioner a certificate of its proceedings and
6 decision, which shall be entered of record in the Patent
7 Office and govern the further proceedings in the case.

8 “(b) (1) Whenever a person authorized by section
9 21 (a) hereof to appeal to the United States Court of Cus-
10 toms and Patent Appeals is dissatisfied with the decision of
11 the Commissioner or Trademark Trial and Appeal Board,
12 said person may, unless appeal has been taken to said Court
13 of Customs and Patent Appeals, have remedy by a civil
14 action if commenced within such time after such decision,
15 not less than sixty days, as the Commissioner appoints or
16 as provided in section 21 (a). The court may adjudge that
17 an applicant is entitled to a registration upon the application
18 involved, that a registration involved should be canceled, or
19 such other matter as the issues in the proceeding require, as
20 the facts in the case may appear. Such adjudication shall
21 authorize the Commissioner to take any necessary action,
22 upon compliance with the requirements of law.

23 “(2) The Commissioner shall not be made a party to an
24 inter partes proceeding under this subsection, but he shall be
25 notified of the filing of the complaint by the clerk of the court

1 in which it is filed and shall have the right to intervene in
2 the action.

3 “(3) In all cases where there is no adverse party, a
4 copy of the complaint shall be served on the Commissioner;
5 and all the expenses of the proceedings shall be paid by the
6 party bringing them, whether the final decision is in his
7 favor or not. In suits brought hereunder, the record in the
8 Patent Office shall be admitted on motion of any party, upon
9 such terms and conditions as to costs, expenses, and the fur-
10 ther cross-examination of the witnesses as the court imposes,
11 without prejudice to the right of any party to take further
12 testimony. The testimony and exhibits of the record in the
13 Patent Office, when admitted, shall have the same effect as
14 if originally taken and produced in the suit.

15 “(4) Where there is an adverse party, such suit may be
16 instituted against the party in interest as shown by the records
17 of the Patent Office at the time of the decision complained of,
18 but any party in interest may become a party to the action.
19 If there be adverse parties residing in a plurality of districts
20 not embraced within the same State, or an adverse party
21 residing in a foreign country, the United States District
22 Court for the District of Columbia shall have jurisdiction and
23 may issue summons against the adverse parties directed to
24 the marshal of any district in which any adverse party
25 resides. Summons against adverse parties residing in for-

1 eign countries may be served by publication or otherwise as
2 the court directs.”

3 SEC. 13. Section 23 is amended by striking from the last
4 paragraph thereof the words “has begun the lawful use of his
5 mark in foreign commerce and that he”.

6 SEC. 14. Section 24 is amended by inserting in the
7 second sentence thereof, following the word “time”, the
8 following: “, upon payment of the prescribed fee and the
9 filing of a verified petition stating the ground therefor,”;
10 and by inserting in the third sentence following the word
11 “Board” the word “which”.

12 SEC. 15. Section 29 is amended by deleting the follow-
13 ing: “under the Act of March 3, 1881, or the Act of
14 February 20, 1905, or on the principal register established
15 by this Act, shall” and inserting in lieu thereof the follow-
16 ing: “in the Patent Office, may”; and by deleting “so to
17 mark goods bearing the registered mark, or by a registrant
18 under the Act of March 19, 1920, or by the registrant
19 of a mark on the supplemental register provided by this
20 Act” and inserting in lieu thereof “to give such notice of
21 registration,”.

22 SEC. 16. Section 30 is amended by striking the word
23 “shall” in the first sentence and inserting in lieu thereof
24 the word “may”; and by striking therefrom all of said
25 section except the first sentence thereof and inserting in

1 lieu thereof the following: "The applicant may file an
2 application to register a mark for any or all of the goods
3 and services upon or in connection with which he is actually
4 using the mark: *Provided*, That when such goods or serv-
5 ices fall within a plurality of classes, a fee equaling the sum
6 of the fees for filing an application in each class shall be
7 paid, and the Commissioner may issue a single certificate
8 of registration for such mark."

9 SEC. 17. Subsection (1) of section 32 is amended by
10 striking the entire subsection and inserting in lieu thereof
11 the following:

12 "Any person who shall, without the consent of the
13 registrant—

14 "(a) use in commerce any reproduction, counter-
15 feit, copy, or colorable imitation of a registered mark
16 in connection with the sale, offering for sale, distribu-
17 tion, or advertising of any goods or services on or in
18 connection with which such use is likely to cause con-
19 fusion, or to cause mistake, or to deceive; or

20 "(b) reproduce, counterfeit, copy, or colorably imi-
21 tate a registered mark and apply such reproduction,
22 counterfeit, copy, or colorable imitation to labels, signs,
23 prints, packages, wrappers, receptables, or advertise-
24 ments intended to be used in commerce upon or in con-
25 nection with the sale, offering for sale, distribution, or

1 advertising of goods or services on or in connection with
2 which such use is likely to cause confusion, or to cause
3 mistake, or to deceive;

4 shall be liable in a civil action by the registrant for the
5 remedies hereinafter provided. Under subsection (b) here-
6 of, the registrant shall not be entitled to recover profits or
7 damages unless the acts have been committed with knowl-
8 edge that such imitation is intended to be used to cause con-
9 fusion, or to cause mistake, or to deceive.”

10 Paragraph (b) of subsection (2) of section 32 is
11 amended by striking the word “published” and inserting
12 in lieu thereof the word “publisher”.

13 SEC. 18. Subsection (a) of section 33 is amended by
14 striking therefrom the words “certificate of” in the first line,
15 and changing “certificate”, second appearance, to “regis-
16 tration”.

17 Subsection (b) of section 33 is amended by striking
18 the word “certificate”, first appearance, and inserting the
19 word “registration” in lieu thereof and by striking there-
20 from the word “certificate”, second appearance, and inserting
21 in lieu thereof “affidavit filed under the provisions of said
22 section 15”.

23 Paragraph (3) of subsection (b) of section 33 is
24 amended by striking therefrom the words “has been assigned
25 and”; and by striking therefrom the word “assignee” and

1 inserting in lieu thereof the words “registrant or a person in
2 privity with the registrant”.

3 Paragraph (5) of subsection (b) of section 33 is
4 amended by striking therefrom the word “the” following the
5 words “date prior to” and inserting in lieu thereof the words
6 “registration of the mark under this Act or”; by striking
7 therefrom “(a) or” following the word “subsection”; and by
8 changing the period to “; or”.

9 Paragraph (6) of subsection (b) of section 33 is
10 amended by inserting the words “registration under this Act
11 or” after the word “the”, second appearance; by striking
12 therefrom “(a) or” following the word “subsection”, first
13 appearance; by striking from the proviso the words “only
14 where the said mark has been published pursuant to subsec-
15 tion (c) of section 12 and shall apply”; by striking the
16 words “the date of” following the words “prior to” in said
17 proviso and inserting in lieu thereof “such registration or
18 such”; by inserting a period after the word “mark”, third
19 occurrence, and striking therefrom the words “under subsec-
20 tion (a) or (c) of section 12 of this Act”; and by changing
21 the period to “; or”.

22 SEC. 19. Section 35 is amended by striking “31 (1) (b) ”
23 and inserting in lieu thereof “32”.

24 SEC. 20. Subsection (b) of section 44 is amended by

1 striking said subsection in its entirety and inserting in lieu
2 thereof the following:

3 “(b) Any person whose country of origin is a party
4 to any convention or treaty relating to trademarks, trade or
5 commercial names, or the repression of unfair competition,
6 to which the United States is also a party, or extends recip-
7 rocal rights to nationals of the United States by law, shall
8 be entitled to the benefits of this section under the condi-
9 tions expressed herein to the extent necessary to give effect
10 to any provision of such convention, treaty or reciprocal law,
11 in addition to the rights to which any owner of a mark is
12 otherwise entitled by this Act.”

13 Subsection (e) of section 44 is amended by inserting
14 after the word “a” in the second sentence the words “certi-
15 fication of a”; and by striking from said second sentence the
16 words “application for or”.

17 SEC. 21. Section 45 is amended as follows: The sixth
18 paragraph of said section, relating to the definition of “ap-
19 plicant, registrant”, is amended by changing “and”, second
20 appearance, to “, predecessors,”.

21 The ninth paragraph of said section, relating to the
22 meaning of the terms “trade name” and “commercial name”,
23 is amended by inserting a comma between the words “com-
24 mercial” and “agricultural”.

25 The eleventh paragraph of said section, being the defi-

1 nition of "service mark", is amended by striking the definiti-
2 tion in its entirety and inserting in lieu thereof:

3 "The term 'service mark' means a mark used in the
4 sale or advertising of services to identify the services of one
5 person and distinguished them from the services of others.
6 Titles, character names and other distinctive features of
7 radio or television programs may be registered as service
8 marks notwithstanding that they, or the programs, may
9 advertise the goods of the sponsor."

10 The fifteenth paragraph of said section, relating to use
11 in commerce, is amended by changing the period at the
12 end of said paragraph to a comma and adding the words "or
13 the services are rendered in more than one State or in this
14 and a foreign country and the person rendering the services
15 is engaged in commerce in connection therewith."

16 The seventeenth paragraph of said section, relating to
17 the meaning of the term "colorable imitation", is amended
18 by changing "terms" to "term" and deleting the word
19 "purchasers" at the end thereof.

20 The final paragraph of said section is amended by strik-
21 ing therefrom the word "commence" and inserting in lieu
22 thereof the word "commerce".

23 SEC. 22. Section 48 is amended by adding, after "sec.
24 4" and within the parenthesis, the following: "; later re-

1 repealed and replaced by U.S.C., title 18, sec. 706" and by
2 adding after "sec. 248" and within the parenthesis, the fol-
3 lowing: "; later repealed and replaced by U.S.C., title 18,
4 sec. 708".

A BILL

To amend the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of international conventions, and for other purposes", approved July 5, 1946, as amended.

By Mr. LINDSAY

FEBRUARY 2, 1961

Referred to the Committee on the Judiciary

87TH CONGRESS
1ST SESSION

H. R. 4333

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 1961

Mr. LINDSAY introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946, as amended.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That paragraph (1) of subsection (a) of section 1 of the
4 Act entitled "An Act to provide for the registration and
5 protection of trademarks used in commerce, to carry out the
6 provisions of certain international conventions, and for other
7 purposes", approved July 5, 1946 (60 Stat. 427), as
8 amended, is amended by striking the words "as might be
9 calculated to deceive" and inserting in lieu thereof "as to

1 be likely, when applied to the goods of such other person, to
2 cause confusion, or to cause mistake, or to deceive"; and
3 by striking the words "or services" from the proviso thereof.

4 SEC. 2. Subsection (d) of section 2 is amended by
5 striking the language beginning with the word "confusion",
6 first appearance, and ending with the word "herewith" at
7 the end of said subsection and inserting in lieu thereof the
8 following: "confusion, or to cause mistake, or to deceive:
9 *Provided*, That when the Commissioner determines that
10 confusion, mistake, or deception is not likely to result from
11 the continued use by more than one person of the same
12 or similar marks under conditions and limitations as to the
13 mode or place of use of the marks or the goods in connec-
14 tion with which such marks are used, concurrent registrations
15 may be issued to such persons when they have become
16 entitled to use such marks as a result of their concurrent
17 lawful use in commerce prior to (i) the earliest of the
18 filing dates of the applications pending under this Act; or
19 (ii) the date of a registration issued under this Act; or
20 (iii) July 5, 1947, in the case of registrations previously
21 issued under the Act of March 3, 1881, or February 20,
22 1905, and continuing in full force and effect on that date;
23 or (iv) July 5, 1947, in the case of applications filed under
24 the Act of February 20, 1905, and registered after July 5,
25 1947. Concurrent registrations may also be issued by the

1 Commissioner when a court of competent jurisdiction has
2 finally determined that more than one person is entitled
3 to use the same or similar marks in commerce. In issuing
4 concurrent registrations, the Commissioner shall prescribe
5 conditions and limitations as to the mode or place of use
6 of the mark or the goods in connection with which such
7 mark is registered to the respective persons.”

8 SEC. 3. Section 6 is amended by striking the entire
9 section and inserting in lieu thereof the following:

10 “SEC. 6. (a) The Commissioner may require the appli-
11 cant to disclaim an unregistrable component of a mark other-
12 wise registrable. An applicant may voluntarily disclaim a
13 component of a mark sought to be registered.

14 “(b) No disclaimer heretofore or hereafter made, or
15 made under paragraph (d) of section 7 of this Act, shall
16 prejudice or affect the applicant’s or registrant’s rights
17 then existing or thereafter arising in the disclaimed matter,
18 or his right of registration on another application if the dis-
19 claimed matter be or shall have become distinctive of his
20 goods or services.”

21 SEC. 4. The first sentence of subsection (a) of section
22 7 is amended by striking therefrom the word “either”; by
23 striking the words “name printed” and inserting in lieu
24 thereof the words “signature placed”; by striking the words
25 “and attested by an assistant commissioner or by one of the

1 law examiners duly designated by the Commissioner,” and
2 by striking the words “and a record thereof, together with
3 printed copies of the drawing and statement of the appli-
4 cant, shall be kept in books for that purpose” and inserting
5 in lieu thereof the words “, and a record thereof shall be
6 kept in the Patent Office.” The second sentence of subsec-
7 tion (a) of section 7 is amended by striking therefrom the
8 word “certificate” and inserting the word “registration” in
9 lieu thereof; by striking therefrom the words “the drawing
10 of”; and by striking the words “the grant of”.

11 Subsection (d) of section 7 is amended by striking the
12 entire subsection and inserting in lieu thereof the following:
13 “Upon application of the registrant the Commissioner may
14 permit any registration to be surrendered for cancellation,
15 and upon cancellation appropriate entry shall be made in the
16 records of the Patent Office. Upon application of the regis-
17 trant and payment of the prescribed fee, the Commissioner
18 for good cause may permit any registration to be amended
19 or to be disclaimed in part: *Provided*, That the amendment
20 or disclaimer does not alter materially the character of the
21 mark. Appropriate entry shall be made in the records of
22 the Patent Office and upon the certificate of registration or,
23 if said certificate is lost or destroyed, upon a certified copy
24 thereof.”

25 Subsection (e) of section 7 is amended by striking the

1 words “certificates of”; by adding an “s” to the word “regis-
2 tration”; and striking the words “a chief of division” and
3 inserting in lieu thereof “an employee of the Office”.

4 Subsection (f) of section 7 is amended by striking from
5 the first sentence the words “, signed by the Commissioner
6 and sealed with the seal of the Patent Office”; by striking
7 the word “certificate”, second occurrence; and by striking
8 the word “certificate”, third occurrence, and inserting the
9 word “registration” in lieu thereof.

10 SEC. 5. Section 9 is amended by striking the entire
11 section and inserting in lieu thereof the following:

12 “SEC. 9. (a) Each registration may be renewed for
13 periods of twenty years from the end of the expiring period
14 upon payment of the prescribed fee and the filing of a veri-
15 fied application therefor, setting forth those goods or services
16 recited in the registration on or in connection with which
17 the mark is still in use in commerce and attaching thereto a
18 specimen or facsimile showing current use of the mark, or
19 showing that any nonuse is due to special circumstances
20 which excuse such nonuse and it is not due to any intention
21 to abandon the mark. Such application may be made at any
22 time within six months before the expiration of the period
23 for which the registration was issued or renewed, or it may
24 be made within three months after such expiration on pay-
25 ment of the additional fee herein provided.

1 “(b) If the Commissioner refuses to renew the regis-
2 tration, he shall notify the registrant of his refusal and the
3 reasons therefor.

4 “(c) An applicant for renewal not domiciled in the
5 United States shall be subject to and comply with the pro-
6 visions of section 1 (d) hereof.”

7 SEC. 6. Section 10 is amended by changing the colon
8 following the word “conducted” to a period and striking the
9 words “*Provided*, That any assigned registration may be
10 canceled at any time if the registered mark is being used by,
11 or with the permission of, the assignee so as to misrepresent
12 the source of the goods or services in connection with which
13 the mark is used”; and striking the sentence “The Commis-
14 sioner shall keep a separate record of such assignments sub-
15 mitted to him for recording.” and inserting in lieu thereof
16 “A separate record of assignments submitted for recording
17 hereunder shall be maintained in the Patent Office.”

18 SEC. 7. Subsection (a) of section 12 is amended by
19 changing the period at the end thereof to a colon and insert-
20 ing after the colon the following: “*Provided*, That in the case
21 of an applicant claiming concurrent use, or in the case of an
22 application to be placed in an interference as provided for in
23 section 16 of this Act, the mark, if otherwise registrable,
24 may be published subject to the determination of the rights
25 of the parties to such proceedings.”

1 Subsection (c) of section 12 is amended by striking
2 therefrom the first word of the last sentence and inserting in
3 lieu thereof the words "Marks published under this".

4 SEC. 8. Section 13 is amended by striking the words
5 "notice of" each occurrence, and by adding at the end thereof
6 the following sentence: "An opposition may be amended
7 under such conditions as may be prescribed by the Com-
8 missioner."

9 SEC. 9. Section 14 is amended by striking said section
10 in its entirety and inserting in lieu thereof the following:

11 "SEC. 14. A verified petition to cancel a registration of
12 a mark, stating the grounds relied upon, may, upon payment
13 of the prescribed fee, be filed by any person who believes
14 that he is or will be damaged by the registration of a mark
15 on the principal register established by this Act, or under the
16 Act of March 3, 1881, or the Act of February 20, 1905—

17 "(a) within five years from the date of the regis-
18 tration of the mark under this Act; or

19 "(b) within five years from the date of publica-
20 tion under section 12 (c) hereof of a mark registered
21 under the Act of March 3, 1881, or the Act of February
22 20, 1905; or

23 "(c) at any time if the registered mark becomes
24 the common descriptive name of an article or substance,
25 or has been abandoned, or its registration was obtained

1 fraudulently or contrary to the provisions of section 4
2 or of subsections (a), (b), or (c) of section 2 of this
3 Act for a registration hereunder, or contrary to similar
4 prohibitory provisions of said prior Acts for a registra-
5 tion thereunder, or if the registered mark is being used
6 by, or with the permission of, the registrant so as to
7 misrepresent the source of the goods or services in con-
8 nection with which the mark is used; or

9 “(d) at any time if the mark is registered under
10 the Act of March 3, 1881, or the Act of February 20,
11 1905, and has not been published under the provisions
12 of subsection (c) of section 12 of this Act; or

13 “(e) at any time in the case of a certification mark
14 on the ground that the registrant (1) does not control,
15 or is not able legitimately to exercise control over, the
16 use of such mark, or (2) engages in the production or
17 marketing of any goods or services to which the certi-
18 fication mark is applied, or (3) permits the use of the
19 certification mark for purposes other than to certify, or
20 (4) discriminately refuses to certify or to continue to
21 certify the goods or services of any person who main-
22 tains the standards or conditions which such mark
23 certifies:

24 “*Provided*, That the Federal Trade Commission may apply
25 to cancel on the grounds specified in subsections (c) and (e)

1 of this section any mark registered on the principal register
2 established by this Act, and the prescribed fee shall not be
3 required.”

4 SEC. 10. Section 15 is amended by striking “(c) and
5 (d)” in the first paragraph and inserting in lieu thereof the
6 following: “(c) and (e)”.

7 Section 15 is amended by striking “or trade name” from
8 paragraph numbered (4).

9 SEC. 11. Section 16 is amended by striking therefrom
10 the word “purchasers”.

11 SEC. 12. Section 21 is amended by striking the entire
12 section, and inserting in lieu thereof the following:

13 “SEC. 21. (a) (1) An applicant for registration of a
14 mark, party to an interference proceeding, party to an op-
15 position proceeding, party to an application to register as a
16 lawful concurrent user, party to a cancellation proceeding,
17 a registrant who has filed an affidavit as provided in section
18 8, or an applicant for renewal, who is dissatisfied with the
19 decision of the Commissioner or Trademark Trial and Ap-
20 peal Board, may appeal to the United States Court of Cus-
21 toms and Patent Appeals thereby waiving his right to
22 proceed under section 21 (b) hereof: *Provided*, That such
23 appeal shall be dismissed if any adverse party to the pro-
24 ceeding, other than the Commissioner, shall, within twenty

1 days after the appellant has filed notice of appeal according
2 to section 21 (a) (2) hereof, files notice with the Commis-
3 sioner that he elects to have all further proceedings con-
4 ducted as provided in section 21 (b) hereof. Thereupon
5 the appellant shall have thirty days thereafter within which
6 to file a civil action under said section 21 (b), in default of
7 which the decision appealed from shall govern the further
8 proceedings in the case.

9 “(2) When an appeal is taken to the United States
10 Court of Customs and Patent Appeals, the appellant shall
11 give notice thereof to the Commissioner, and shall file in
12 the Patent Office his reasons of appeal, specifically set forth
13 in writing, within such time after the date of the decision
14 appealed from, not less than sixty days, as the Commissioner
15 appoints.

16 “(3) The court shall, before hearing such appeal, give
17 notice of the time and place of the hearing to the Commis-
18 sioner and the parties thereto. The Commissioner shall
19 transmit to the court certified copies of all the necessary
20 original papers and evidence in the case specified by the
21 appellant and any additional papers and evidence specified
22 by the appellee, and in an ex parte case the Commissioner
23 shall furnish the court with the grounds of the decision of
24 the Patent Office, in writing, touching all the points involved
25 by the reasons of appeal.

1 “(4) The court shall hear and determine such appeal
2 on the evidence produced before the Patent Office, and the
3 decision shall be confined to the points set forth in the
4 reasons of appeal. Upon its determination, the court shall
5 return to the Commissioner a certificate of its proceedings
6 and decision, which shall be entered of record in the Patent
7 Office and govern the further proceedings in the case.

8 “(b) (1) Whenever a person authorized by section 21
9 (a) hereof to appeal to the United States Court of Customs
10 and Patent Appeals is dissatisfied with the decision of the
11 Commissioner or Trademark Trial and Appeal Board, said
12 person may, unless appeal has been taken to said Court of
13 Customs and Patent Appeals, have remedy by a civil action
14 if commenced within such time after such decision, not less
15 than sixty days, as the Commissioner appoints or as provided
16 in section 21 (a). The court may adjudge that an applicant
17 is entitled to a registration upon the application involved,
18 that a registration involved should be canceled, or such other
19 matter as the issues in the proceeding require, as the facts in
20 the case may appear. Such adjudication shall authorize the
21 Commissioner to take any necessary action, upon compliance
22 with the requirements of law.

23 “(2) The Commissioner shall not be made a party to an
24 inter partes proceeding under this subsection, but he shall
25 be notified of the filing of the complaint by the clerk of

1 the court in which it is filed and shall have the right to
2 intervene in the action.

3 “(3) In all cases where there is no adverse party, a
4 copy of the complaint shall be served on the Commissioner;
5 and all the expenses of the proceedings shall be paid by
6 the party bringing them, whether the final decision is in
7 his favor or not. In suits brought hereunder, the record in
8 the Patent Office shall be admitted on motion of any party,
9 upon such terms and conditions as to costs, expenses, and
10 the further cross-examination of the witnesses as the court
11 imposes, without prejudice to the right of any party to take
12 further testimony. The testimony and exhibits of the record
13 in the Patent Office, when admitted, shall have the same
14 effect as if originally taken and produced in the suit.

15 “(4) Where there is an adverse party, such suit may
16 be instituted against the party in interest as shown by the
17 records of the Patent Office at the time of the decision com-
18 plained of, but any party in interest may become a party
19 to the action. If there be adverse parties residing in a
20 plurality of districts not embraced within the same State,
21 or an adverse party residing in a foreign country, the United
22 States District Court for the District of Columbia shall have
23 jurisdiction and may issue summons against the adverse
24 parties directed to the marshal of any district in which any
25 adverse party resides. Summons against adverse parties

1 residing in foreign countries may be served by publication
2 or otherwise as the court directs.”

3 SEC. 13. Section 23 is amended by striking from the
4 last paragraph thereof the words “has begun the lawful use
5 of his mark in foreign commerce and that he”.

6 SEC. 14. Section 24 is amended by inserting in the
7 second sentence thereof, following the word “time”, the
8 following: “, upon payment of the prescribed fee and the
9 filing of a verified petition stating the ground therefor,”; and
10 by inserting in the third sentence following the word “Board”
11 the word “which”.

12 SEC. 15. Section 29 is amended by deleting the follow-
13 ing: “under the Act of March 3, 1881, or the Act of Feb-
14 ruary 20, 1905, or on the principal register established by
15 this Act, shall” and inserting in lieu thereof the following:
16 “In the Patent Office, may”; and by deleting “so to mark
17 goods bearing the registered mark, or by a registrant under
18 the Act of March 19, 1920; or by the registrant of a mark
19 on the supplemental register provided by this Act” and in-
20 serting in lieu thereof “to give such notice of registration,”.

21 SEC. 16. Section 30 is amended by striking the word
22 “shall” in the first sentence and inserting in lieu thereof the
23 word “may”; and by striking therefrom all of said section
24 except the first sentence thereof and inserting in lieu thereof
25 the following: “The applicant may file an application to

1 register a mark for any or all of the goods and services upon
2 or in connection with which he is actually using the mark:
3 *Provided*, That when such goods or services fall within a
4 plurality of classes, a fee equaling the sum of the fees for
5 filing an application in each class shall be paid, and the Com-
6 missioner may issue a single certificate of registration for
7 such mark.”

8 SEC. 17. Subsection (1) of section 32 is amended by
9 striking the entire subsection and inserting in lieu thereof
10 the following:

11 “Any person who shall, without the consent of the
12 registrant—

13 “(a) use in commerce any reproduction, counter-
14 feit, copy, or colorable imitation of a registered mark in
15 connection with the sale, offering for sale, distribution, or
16 advertising of any goods or services on or in connection
17 with which such use is likely to cause confusion, or to
18 cause mistake, or to deceive; or

19 “(b) reproduce, counterfeit, copy, or colorably imi-
20 tate a registered mark and apply such reproduction,
21 counterfeit, copy, or colorable imitation to labels, signs,
22 prints, packages, wrappers, receptacles or advertise-
23 ments intended to be used in commerce upon or in con-
24 nection with the sale, offering for sale, distribution, or

1 advertising of goods or services on or in connection with
2 which such use is likely to cause confusion, or to cause
3 mistake, or to deceive.

4 shall be liable in a civil action by the registrant for the
5 remedies hereinafter provided. Under subsection (b) hereof,
6 the registrant shall not be entitled to recover profits or dam-
7 ages unless the acts have been committed with knowledge
8 that such imitation is intended to be used to cause confusion,
9 or to cause mistake, or to deceive.”

10 Paragraph (b) of subsection (2) of section 32 is
11 amended by striking the word “published” and inserting in
12 lieu thereof the word “publisher”.

13 SEC. 18. Subsection (a) of section 33 is amended by
14 striking therefrom the words “certificate of” in the first
15 line, and changing “certificate”, second appearance, to regis-
16 tration”.

17 Subsection (b) of section 33 is amended by striking
18 the word “certificate”, first appearance, and inserting the
19 word “registration” in lieu thereof and by striking therefrom
20 the word “certificate”, second appearance, and inserting in
21 lieu thereof “affidavit filed under the provisions of said sec-
22 tion 15”.

23 Paragraph (3) of subsection (b) of section 33 is
24 amended by striking therefrom the words “has been assigned

1 and”; and by striking therefrom the word “assignee” and
2 inserting in lieu thereof the words “registrant or a person
3 in privity with the registrant”.

4 Paragraph (5) of subsection (b) of section 33 is
5 amended by striking therefrom the word “the” following
6 the words “date prior to” and inserting in lieu thereof the
7 words “registration of the mark under this Act or”; by
8 striking therefrom “(a) or” following the word “subsec-
9 tion”; and by changing the period to “; or”.

10 Paragraph (6) of subsection (b) of section 33 is
11 amended by inserting the words “registration under this
12 Act or” after the word “the”, second appearance; by
13 striking therefrom “(a) or” following the word “subsec-
14 tion”, first appearance; by striking from the proviso the
15 words “only where the said mark has been published pur-
16 suant to subsection (c) of section 12 and shall apply”;
17 by striking the words “the date of” following the words
18 “prior to” in said proviso and inserting in lieu thereof “such
19 registration or such”; by striking therefrom the words “under
20 subsection (a) or (c) of section 12 of this Act”; and by
21 changing the period to “; or”.

22 SEC. 19. Section 35 is amended by striking “31 (1)
23 (b)” and inserting in lieu thereof “32”.

24 SEC. 20. Subsection (b) of section 44 is amended by

1 striking said subsection in its entirety and inserting in lieu
2 thereof the following:

3 “(b) Any person whose country of origin is a party
4 to any convention or treaty relating to trademarks, trade or
5 commercial names, or the repression of unfair competition,
6 to which the United States is also a party, or extends re-
7 ciprocal rights to nationals of the United States by law, shall
8 be entitled to the benefits of this section under the conditions
9 expressed herein to the extent necessary to give effect to any
10 provision of such convention, treaty or reciprocal law, in ad-
11 dition to the rights to which any owner of a mark is other-
12 wise entitled by this Act.”

13 Subsection (e) of section 44 is amended by inserting
14 after the word “a” in the second sentence the words “certifi-
15 cation or a”; and by striking from said second sentence the
16 words “application for or”.

17 SEC. 21. Section 45 is amended as follows: The sixth
18 paragraph of said section, relating to the definition of “ap-
19 plicant, registrant”, is amended by changing “and”, second
20 appearance, to “, predecessors,”.

21 The ninth paragraph of said section, relating to the
22 meaning of the terms “trade name” and “commercial name”,
23 is amended by inserting a comma between the words “com-
24 mercial” and “agricultural”.

1 The eleventh paragraph of said section, being the defini-
2 tion of "service mark", is amended by striking the definition
3 in its entirety and inserting in lieu thereof:

4 "The term 'service mark' means a mark used in the sale
5 or advertising of services to identify the services of one
6 person and distinguished them from the services of others.
7 Titles, character names and other distinctive features of radio
8 or television programs may be registered as service marks
9 notwithstanding that they, or the programs, may advertise
10 the goods of the sponsor."

11 The fifteenth paragraph of said section, relating to use
12 in commerce, is amended by changing the period at the end
13 of said paragraph to a comma and adding the words "or
14 the services are rendered in more than one State or in this
15 and a foreign country and the person rendering the services
16 is engaged in commerce in connection therewith."

17 The seventeenth paragraph of said section, relating to
18 the meaning of the term "colorable imitation", is amended
19 by changing "terms" to "term" and deleting the word "pur-
20 chasers" at the end thereof.

21 The final paragraph of said section is amended by strik-
22 ing therefrom the word "commence" and inserting in lieu
23 thereof the word "commerce".

A BILL

To amend the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946, as amended.

By Mr. LINDSAY

FEBRUARY 15, 1961

Referred to the Committee on the Judiciary

Aug 24, 1961

14. HOG CHOLERA. The Rules Committee reported a resolution for the consideration of H.R. 7176, to provide for a national hog cholera eradication program. p. 15844
15. SUGAR. Rep. Dole advocated the consideration of new sugar legislation, saying, "The administrators of the U. S. sugar program are forced to take...inconsistent and utterly unreasonable steps to restrict American sugar production and marketing because of the strange sugar law now in effect." p. 15829
16. 4-H CLUBS. Rep. Randall praised the 4-H Club program, saying, "As a Member of Congress, we will continue to study both the authorization and appropriation bills for the Department of Agriculture to be sure that this cause is supported from the national level." pp. 15829-30
17. WATERSHEDS. The Public Works Committee voted to report (but did not actually report) with amendments H. R. 3801, to authorize the Secretary of the Army and the Secretary of Agriculture to make joint investigations and surveys of watershed areas for flood prevention or conservation development. p. D764
18. MINING. By a vote of 196 to 172, passed with amendments H. R. 84, to stabilize the mining of lead and zinc by providing Federal payments to small domestic producers on public, Indian, and other lands. pp. 15796-818
19. TRANSPORTATION. The Interstate and Foreign Commerce Committee voted to report (but did not actually report) S. 320, to amend the Interstate Commerce Act so as to permit State commissions to grant the right to motor common carriers operating within a single State to engage in interstate or foreign operations within the boundaries of the State in which intrastate authority is being simultaneously authorized, and to authorize ICC to issue certificates of registration to existing carriers engaged in interstate operations under part II of the Act. p. D763
20. TRADEMARKS. Subcommittee No. 3 of the Judiciary Committee voted to report to the full committee with amendment H. R. 4333, providing various amendments to the laws providing for the registration and protection of trademarks. p. D763
21. LANDS. The Public Works Committee voted to report (but did not actually report) H. R. 7888, to extend the time within which the land in certain reservoir projects in Texas may be reconveyed to the former owners thereof. p. 764
22. APPROPRIATIONS. Received from the President (on Aug. 22) a supplemental appropriation estimate (H. Doc. 228) which includes an item for the Area Redevelopment Administration, Department of Commerce, authorizing the Secretary of Commerce to use the area redevelopment fund for loans and other financial assistance for area redevelopment purposes in accordance with sections 6 (loans to aid in financing projects in redevelopment areas) and 7 (loans for public facilities) of the Area Redevelopment Act.
23. PEACE CORPS. Rep. Rodino praised the Peace Corps and Robert S. Shriver, Jr., saying, "The hallmark of the Peace Corps volunteers will be altruism, idealism, and devoted service to their country and the cause of peace." pp. 15842-3
24. LEGISLATIVE PROGRAM. Rep. McCormack announced that H. R. 7176, to provide for a national hog cholera eradication program, will be considered on Mon., and H. R. 6360, to authorize an additional Assistant Secretary of Commerce will be considered on Tues. p. 15815
25. ADJOURNED until Mon., Aug. 28. p. 15844

ITEMS IN APPENDIX

26. ELECTRIFICATION. Extension of remarks of Sen. Kefauver inserting an article, "TVA is Yardstick in Several Ways." p. A6661
27. FOREIGN AID. Extension of remarks of Rep. Westland supporting H. R. 8400, the foreign aid authorization bill. p. A6666
Extension of remarks of Rep. Alger saying, "we cannot solve all the world's problems by throwing dollars at them," and inserting an article, "Lazy Diplomacy." p. A6679
28. FARM PROGRAM. Extension of remarks of Rep. Breeding saying that the farmers will not be the blame if the price of bread is raised. p. A6668
Extension of remarks of Rep. Alger condemning the welfare state and inserting an article, "The Man With the Hoe." p. A6684
29. NATURAL RESOURCES. Extension of remarks of Rep. Johnson, Wisc., saying, "It is the responsibility of our generation to see to it that there will be sufficient outdoor recreational areas available to our increasing population so that our children and their children may enjoy the outdoor opportunities which we have had," and inserting an article, "Wisconsin the Beautiful." p. A6683

BILLS INTRODUCED

30. EDUCATION. H. R. 8890, by Rep. Thompson, N. J., to amend Public Law 815 and Public Law 874, 81st Congress, so as to extend their expired provisions for an additional year and to authorize payments under Public Law 815 for school construction in school districts with severe classroom shortages, to extend for 1 year the student loan program of title II of the National Defense Education Act of 1958; to Education and Labor Committee.
31. SURPLUS COMMODITIES. H.R. 8892, by Rep. Rogers, Fla., to amend the Agricultural Act of 1956, as amended, and the Agricultural Act of 1949, as amended, to prohibit the subsidized export of any agricultural commodity to Communist nations and to prohibit sales by the Commodity Credit Corporation of any agricultural commodities for export to such nations; to Agriculture Committee.
32. WATER. S. 2460, by Sen. Anderson, to provide for a study by the Secretary of the Interior of the need or desirability of developing pumped storage; to Interior and Insular Affairs Committee.

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COMMITTEE HEARINGS ANNOUNCEMENTS:

- AUG. 25: Foreign aid authorization bill, conferees (exec).
Foreign aid appropriations, S. Appropriations (exec).
H. Agriculture Subcommittee on Conservation and Credit (exec).

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Aug 29, 1961

Rep. Frelinghuysen discussed these bills, saying, "Legislation which would have a farreaching effect upon the whole system of education in America deserves more consideration and better treatment than that accorded in the committee this morning." pp. 16313-7

15. TRADEMARKS. The Judiciary Committee voted to report (but did not actually report) with amendments H. R. 4333, providing various amendments to the laws providing for the registration and protection of trademarks. p. D781
16. LANDS. The Interior and Insular Affairs Committee reported with amendments H. R. 6630, relating to the conveyance of certain parts of rights-of-way by railroad companies (H. Rept. 1060). p. 16333
The Public Works Committee reported without amendment H. R. 7888, to extend the time within which the land in certain reservoir projects in Texas may be reconveyed to the former owners thereof (H. Rept. 1061). p. 16333
17. FOOD DISTRIBUTION. Rep. Findley said, "the Federal program of free food to the needy is getting out of hand. Indeed it has the earmarks of a national scandal," and inserted several articles critical of the program for distributing surplus foods to the needy. pp. 16304-5
18. SUGAR. Rep. May opposed further acreage restrictions on domestic sugarbeet growers, and said, "instead of attempting to limit domestic production of sugar, a vital and necessary food, we should be striving mightily to increase production ...We should also stockpile sugar." pp. 16326-7
Rep. McIntire discussed the dispersal of the sugar beet industry, and said, "We should enact legislation that would encourage such further dispersal of this vital food industry." pp. 16327-8
19. BUILDINGS. Rep. Reuss discussed his bill, H. R. 8248, to provide an orderly program of relocating the excessive concentration of Government facilities in Washington, and inserting a number of articles. pp. 16330-1

ITEMS IN APPENDIX

20. DAIRY RESEARCH. Extension of remarks of Sen. Wiley discussing his proposed bill to establish a dairy research laboratory and inserting an article in which he offered some suggestions for expanding research by the dairy industry. p. A6774
21. NATIONAL POLICIES. Extension of remarks of Rep. Rhodes inserting a proposed statement of U. S. national policies and objectives. pp. A6774-6
22. FOOD-FOR-FREEDOM. Extension of remarks of Rep. Jensen inserting the proposals of former Rep. Cal D. Johnson, "Food-for-Freedom Program--A Plan Whereby The Military Would Use Our Farms As They Use Our Factories To Win The Cold War." p. A6783
23. SMALL BUSINESS. Extension of remarks of Rep. Multer commending and inserting a report on Small Business Administration activities for the first half of 1961. pp. A6785-8
24. DEPRESSED AREAS. Extension of remarks of Rep. Dague inserting an article critical of the depressed areas program. pp. A6792-3
25. FARM PROGRAM. Rep. Williams, Miss., inserted a statement by M. S. Shaw, director of extension service in Miss., "What Does Agriculture Mean to Me?", discussing

the importance of our agricultural resources and stating, "Be proud of our agriculture. Tell others about it." pp. A6816-7

Rep. Zelenko inserted an editorial in which a rural New Yorker discusses Mr. Smith's Cadillac. p. A6828

26. SURPLUS COMMODITIES. Extension of remarks of Reps. Alger and Latta inserting an article, "Bureaucrats on Top," discussing in part the disposal of surplus commodities. p. A6794, A6807-8

27. WATER POLLUTION. Extension of remarks of Rep. Dingell inserting an article "Pollution is Major Threat--Serious Fresh Water Shortage May Hit Nation by Year 2000." pp. A6813-4

28. ECONOMICS. Extension of remarks of Rep. Curtis, Missouri, inserting a series of articles from the Journal of Commerce discussing President Kennedy's economic programs. pp. A6823-6

29. COMMITTEE HEARINGS. Extension of remarks of Rep. Younger inserting an article "Kennedy Aids Frustrated by Ill Informed Congress." pp. A6803-4

BILLS INTRODUCED

30. SCHOOL LUNCH. H. R. 8962, by Rep. O'Hara of Mich., to revise the formula for apportioning cash assistance funds among the States under the National School Lunch Act; to the Education and Labor Committee.

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COMMITTEE HEARINGS ANNOUNCEMENTS:

Aug. 30: Establishment of national milk sanitation standards, H. Interstate and Foreign Commerce (Secretary Freeman to testify).

Pending wheat bills, H. Agriculture (exec) (Satterfield, ASCS, and Rooney, OGC, to testify).

Additional supergrade positions, H. Civil Service (exec).

Foreign aid authorization bill, conferees (exec).

Foreign aid appropriations, S. Appropriations (exec).

Problems of common carriers, S. Commerce (ICC Chairman Hutchinson to testify).

Transportation policy, H. Merchant Marine and Fisheries (exec) (Secretary Hodges to testify).

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REGISTRATION AND PROTECTION OF TRADEMARKS

SEPTEMBER 5, 1961.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WILLIS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 4333]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4333) to amend the act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes," approved July 5, 1946, as amended, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

1. Page 2, line 18, insert after "pending" the words "or of any registration issued".

Page 2, lines 18 and 19, strike out "or (ii) the date of a registration issued under this Act;"

Page 2, line 20, change "(iii)" to "(ii)".

Page 2, line 23, change "(iv)" to "(iii)".

2. Page 3, line 14, strike out "heretofore or hereafter made, or" and substitute ", including those".

Page 4, lines 14 and 15, change "cancellation" to "cancelation".

Page 5, line 25, change "provided" to "prescribed".

Page 5, line 17, change "attaching" to "having attached".

Page 13, line 16, change "In" to "in".

Page 18, line 6, change "distinguished" to "distinguish".

EXPLANATION OF AMENDMENTS

Explanation of amendment 1.—The phrase "or (ii) the date of a registration issued under this Act" was deleted as being inconsistent with the provisions of the preceding item, "(i) the earliest of the filing dates of the applications pending under this Act." Under the bill as

introduced, an applicant for concurrent registration would be obliged to prove an earlier date of use if his application happened to be copending with another than if he merely waited until the registration issued to another and then filed his application. As amended, the bill provides a consistent test for determining the right to a concurrent use proceeding. In a concurrent use proceeding, the date of use asserted by an applicant must be at least as early as the filing date of the allegedly conflicting application, or, in the case of any registration issued under the act, the date of filing of the application which matured into the registration.

Explanation of amendment 2.—The purpose of these amendments is to correct typographical errors.

PURPOSE

The purpose of the legislation is to make a number of miscellaneous changes in the Trademark Act of 1946 so as to clarify the meaning of several of its provisions. The provisions of the bill affect details of registration, administrative and court procedure, internal organization of the Patent Office regarding trademark matters, and refinements in language that experience has shown to be desirable. It also corrects typographical errors in the Trademark Act of 1946.

VIEWS OF GOVERNMENT AGENCIES AND INTERESTED PRIVATE ORGANIZATIONS

The Department of Justice, in its report dated August 14, 1961, states that the subject of the legislation is not a matter as to which the Department of Justice has primary responsibility, and accordingly makes no recommendation as to the enactment of the bill.

The Department of Commerce, in a report dated August 15, 1961, recommends enactment of the bill with certain technical and clarifying amendments.

The Department of State, in a report dated September 2, 1959, on a predecessor bill, perceived no objection to the enactment of this legislation, and in fact, expressed its support for section 20 thereof as it concerns the applicability of the act to nationals of foreign countries.

The Treasury Department, in its report of August 14, 1959, on a predecessor bill, stated that it had no recommendations to make because the proposed legislation related to matters primarily within the jurisdiction of the Department of Commerce.

The Federal Trade Commission, in its report on the instant bill, dated August 11, 1961, suggests that the jurisdiction of the Commission be expanded to permit it to file petitions for cancellation of registered marks which become, prior or subsequent to registration, the common descriptive name of an article or substance. This would include registrations issued under the Trademark Acts of 1881 and of 1905 as well as registrations issued under the Principal Register established under the Trademark Act of 1946. The committee does not think it appropriate to consider changes of this nature at this time, since the instant bill is in large part a housekeeping measure, making minimal substantive changes in the trademark law. The Federal Trade Commission's suggestions, on the other hand, would bring about a substantive change in policy. In addition, the committee has been advised that there is no present need for this particular change.

The Federal Trade Commission also objected to the proposed change in the definition of "service marks" appearing in section 45 of the Trademark Act. The committee, however, feels that the proposed change should be adopted, as it does nothing more than codify the present practice of the Patent Office in this regard.

The instant bill has the approval and support of the U.S. Trademark Association, the American Bar Association, the National Association of Manufacturers, the District of Columbia Bar Association, the Philadelphia Bar Association, the New York County Lawyers Association, and the bar of the city of New York.

LEGISLATIVE HISTORY

Similar legislation passed the Senate in the 83d Congress and again in the 86th Congress. However, the House took no action on each occasion.

Hearings were held on predecessor bills on March 25, 1954. In addition, your committee held hearings on the instant bill on August 16, 1961.

It might be well to relate some of the history of the trademark laws of the United States which led up to the instant legislation. On July 5, 1946, the trademark laws of the United States were revised by Public Law 489, 79th Congress (ch. 540, 2d sess., 60 Stat. 427), known as the Lanham Trademark Act. It became effective on July 5, 1947, 1 year after its enactment, and completely rewrote the trademark laws of the United States and made a large number of substantial changes. During the period (about 14 years) that this act has been in operation the need of some revisions has become evident.

In 1948 representatives of some 26 legal and trade associations concerned with trademark matters were formed into a committee to study and recommend what changes in the Trademark Act could be agreed upon as necessary or desirable. As a result thereof, S. 1957 of the 82d Congress, incorporating proposed changes in the trademark laws as recommended by this committee, was introduced. That bill was the subject of considerable study and of further suggestions from individuals, associations, and Government departments. On July 31, 1953, a bill representing many of such suggestions was introduced in the 83d Congress. This bill was S. 2540. As stated, that bill was the subject of hearings; amendments were made, and a bill as an amendment in the nature of a substitute was drafted. The hearings were held on March 25, 1954, and representatives of interested associations recommended enactment of the legislation. The various Government departments interested in the subject matter of the bill submitted reports of their views. The bill was then favorably reported on August 5, 1954, and was passed by the Senate on August 11, 1954, but was not acted upon by the House of Representatives prior to adjournment.

Again, in the 84th Congress, a bill was introduced which was in the wording of S. 2540, being S. 215 of the 84th Congress, but no action was taken thereon. In the 86th Congress a bill (S. 2429) similar to the previous bills but not covering all of the features contained in the prior legislation, passed the Senate. This bill has been termed as a "housekeeping" bill and was considered to be not controversial. The various departments of Government had, with the

exception of certain technical amendments, no objection to this legislation.

Hearings were held on the instant bill (H.R. 4333) on August 16, 1961. The bill makes numerous amendments to the Trademark Act of 1946. They are set forth later in this report under a heading entitled "Analysis of Legislation." Some of the amendments merely correct typographical errors which appeared in the 1946 act; some involve matters of clarification of meaning, and some make desirable changes in substance as well as in details of procedure.

ANALYSIS OF LEGISLATION

An analysis of the provisions of H.R. 4333 follows:

Section 1 of the bill proposes to amend, in several respects, section 1(a)(1) of the act, which relates to the statements required of an applicant for registration of a trademark.

The first amendment proposes to amend the phrase which now reads:

that no other person, * * * has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive

by canceling the underscored words and substituting—

as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive

The purpose of this amendment is to make the required allegation of the applicant more nearly complete and more accurate.

The second amendment is the cancelation of the words "or services", which appear in the proviso to section a(a)(1). This is for uniformity of drafting and does not affect the meaning.

Section 2 of the bill proposes to make a number of changes in section 2 of the act.

The first clause of section 2(d) of the act provides that a mark is to be refused registration if it so resembles a mark registered in the Patent Office or a mark previously used by another, as to be likely when applied to the goods of the applicant, "to cause confusion or mistake or to deceive purchasers." The bill proposes to revise the quoted expression to read "to cause confusion, or to cause mistake, or to deceive." The purpose of the proposed change is to coordinate the language here with that used elsewhere and to omit the word "purchasers", since the provision actually relates to potential purchasers as well as to actual purchasers. The word "purchasers" is eliminated so as to avoid the possibility of misconstruction of the present language of the statute.

Section 2(d) of the act contains a long proviso relating to so-called concurrent registrations of trademarks. The bill, as amended, proposes to rewrite this proviso, amending it in a number of respects. The principal amendment is to enlarge the limiting dates after which rights to concurrent registrations cannot accrue. The amendment will increase the possibility of a concurrent registration insofar as the dates involved are concerned.

The act now states that concurrent registrations are to be granted when confusion or mistake or deceit of purchasers is not likely to result from the continued use of the marks—

under conditions and limitations as to the mode or place of use or the goods in connection with which such registrations may be granted.

There is considerable confusion in the interpretation of this language, which is far from clear. The bill proposes to amend the particular phrase to read:

under conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, * * *

This language is much clearer than the original language.

A few simplifications over the language of the present proviso additionally are made.

Section 3 of the bill proposes to rewrite section 6 of the act relating to disclaimers.

Section 4 of the bill would revise section 7(a) of the act relating to the formalities of issuing a registration. The proposed language is simpler than the present wording of the statute and would enable the Patent Office to effect economies in printing the registrations.

Section 4 of the bill would also rewrite section 7(d) of the act, effecting considerable clarification and at the same time making several changes. First, the requirement for a fee in connection with the voluntary surrender or cancelation of a registration by the registrant is removed. Such surrenders or voluntary cancelations are very rare and the fee may have deterred others which would have been made. Second, it is proposed to omit the words "in whole or" from the clause in the present section which now states that the Commissioner may "permit any registered mark to be disclaimed in whole or in part." The underlined words are not seen to be necessary.

Section 4 of the bill would further make certain language changes in section 7(e) of the act to provide consistency throughout the act and would desirably provide for any duly designated employee, rather than only a chief of a division, to certify copies of Patent Office records.

Section 4 of the bill would eliminate the present requirements in section 7(f) of the act that the Commissioner sign all certificates of correction, and would make certain language changes to provide consistency throughout the act.

Section 5 of the bill proposes to amend section 9 of the act relating to the renewal of trademark registrations. The act now requires the registrant, prior to renewal, to file an affidavit stating that the mark is still in use in commerce. The proposed change permits the registrant to obtain the renewal of the registration even if the mark is not then being used, provided that the nonuse is due to special circumstances which excuse the nonuse and is not due to any intention to abandon the mark.

The affidavit now required by this section of the act must state that the mark is in use in commerce, but there is no requirement that the affidavit specify the goods on which the mark is used. Since the proposed amendment provides for an excuse for nonuse due to special circumstances, the amendment also provides that the affidavit (verified application) must set forth those goods recited in the registration

on which said mark is still in use in commerce. There must also be attached a specimen or facsimile showing current use of the mark. These additional provisions are particularly desirable. Renewals are extensions of the registrations for 20 years, and the Patent Office records should reflect the goods on which the marks are then being used.

Section 6 of the bill proposes to amend section 10 of the act by canceling the following proviso:

Provided, That any assigned registration may be canceled at any time if the registered mark is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used.

The purpose in canceling this proviso is to incorporate it in broader form, as a requirement applying to any registrant, in section 14, which is a more appropriate part of the act.

The bill would also revise the language of the sentence dealing with records of assignment, but there is no change in substance proposed.

Section 7 of the bill proposes to amend section 12(a) of the act by adding the following proviso:

Provided, That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference as provided for in section 16 of this Act, the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings.

The purpose of this addition is to effect a minor simplification in the Patent Office procedure.

Section 7 of the bill would also revise and clarify the last sentence of subsection (c) of section 12.

Section 8 of the bill would add a sentence to section 13 of the act to permit an opposition to be amended, and it would strike the words "notice of", each occurrence, thereby making the section refer to "opposition" rather than "notice of opposition."

Section 14(c) of the act provides, as one of the grounds for canceling a registration at any time—

if the registered mark becomes the common descriptive name of an article or substance on which the patent has expired—

the amendment in the bill cancels the words—

on which the patent has expired.

Section 14(c) of the act also provides as a ground for cancellation at any time—

if the registered mark has been assigned and is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used.

This language is replaced by the following broader language of the bill:

if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used.

Section 10 of the bill would make a change in section 15 of the act required by the revision and relettering of paragraphs in section 14.

Section 10 of the bill also proposes to amend section 15 of the act by canceling from item 4 the underscored words in the following quotation:

(4) no incontestable right shall be acquired in a mark
or trade name which is the common descriptive name of
any article or substance

The underlined words should be canceled since trade names, as such are not registered.

Section 11 of the bill proposes a change in section 16 of the act corresponding to a change made in section 2(d).

Section 12 of the bill proposes to rewrite completely section 21 of the act dealing with appeals to the U.S. Court of Customs and Patent Appeals and other judicial review of Patent Office decisions. The act now incorporates by reference the procedure of appeals to the Court of Customs and Patent Appeals and review by civil action in patent cases. The proposed amendment incorporates, with necessary changes in language, the various provisions of title 35 relating to such appeals and review.

Section 23 of the act, referred to in Section 13 of the Act, requires that in order for a mark to be eligible for registration on the Supplemental Register it must have been in lawful use for the year preceding the filing of the application. However, this section further provides that where an applicant required domestic registration as a basis for foreign protection of his mark, upon a proper showing that he has begun the lawful use of his mark in foreign commerce, the Commissioner may waive the requirement for a full year's use and may grant registration forthwith. Section 13 of the bill proposes to amend section 23 of the act to eliminate the requirement that the mark be in use in foreign commerce before the Commissioner can waive the requirement for a full year's use in order to be eligible for registration. This proposal does not eliminate the fundamental requirement that the mark actually be in use before it can be registered. The section as amended merely provides for waiving the length of time of use.

Section 14 of the bill proposes to amend section 24 of the act by adding the phrase:

, upon payment of the prescribed fee and the filing of a verified petition stating the ground therefor,

in order to make the language correspond to that used in the amendment to section 14 of the act.

Section 15 of the bill would clarify section 29 of the act relating to marking requirements.

Section 16 of the bill would amend section 30 of the act by changing the mandatory requirement of establishing internal classification of

goods to a discretionary provision; and it would clarify language dealing with multiple applications.

Section 17 of the bill proposes to rewrite section 32(1) of the act, making several changes and rearranging the language.

One change is the omission of the underlined words from the following quotation from clause (a):

on or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers as to the source of origin of such goods or services

This change is parallel to a similar change made in section 2(d) of the act.

Section 17 of the bill also proposes to amend section 32(2) of the act to correct a typographical error.

Section 18 of the bill would make amendments in subsections (a) and (b) of section 33 of the act. The amendments to subsection (a) and the opening paragraph of subsection (b) are an improvement in accuracy. The amendment to paragraph (3) of subsection (b) is parallel to amendments to sections 10 and 14. The amendments to paragraphs (5) and (6) of subsection (b) change a limiting date.

Section 19 of the bill proposes to correct a typographical error in section 35 of the act.

Section 20 of the bill proposes to amend section 44(b) of the act by adding a reference to a country which extends reciprocal rights to nationals of the United States by law and by revising the language to a more understandable form. This amendment is considered desirable.

Section 20 of the bill also proposes to amend section 44(e) of the act and effects considerable improvement therein.

Section 21 of the bill proposes six amendments to section 45 of the act which contains definitions.

The first of these amendments, to the sixth paragraph of the section, amends the definition of "applicant" and "registrant" to include "predecessors."

The ninth paragraph is amended to correct a typographical error in the omission of a comma.

The 11th paragraph, the definition of service mark, is amended to permit titles of radio and television programs to be registered as service marks even though they advertise goods.

The amendments to the 15th paragraph amplify the definition of use in commerce with respect to service marks.

The definition of colorable imitation, in the 17th paragraph of the act, is amended to cancel the word "purchasers," in line with the amendment to section 2(d) of the act.

The last amendment corrects a typographical error in the final paragraph of section 45.

The committee, after a study of the foregoing, believes that H.R. 4333 is meritorious and, therefore, recommends that the legislation, as amended, be considered favorably.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., August 14, 1961.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H.R. 4333) to amend the act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes," approved July 5, 1946, as amended. This is also in response to your kind invitation to have a representative attend the hearings on the bill before subcommittee No. 3 on August 16.

The bill would make a number of changes in the Trademark Act of July 5, 1946, with respect to registration, administrative and court procedure, and internal organization of the Patent Office regarding trademark matters.

Inasmuch as the bill does not involve matters of primary concern to the Department of Justice, we prefer to make no recommendation as to its enactment, and do not plan to have a representative at the hearings.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

BYRON R. WHITE,
Deputy Attorney General.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., August 15, 1961.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is in reply to your request for the views of the Department of Commerce with respect to H.R. 4333, a bill to amend the act entitled "An act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes," approved July 5, 1946, as amended.

The bill would make a number of administrative, clarifying and correcting amendments in the Trademark Act. Attached is a copy of a memorandum from the Acting Commissioner of Patents in which he has made a section-by-section analysis of the bill and has also suggested changes in and additions to the bill.

The Department recommends enactment of H.R. 4333 with the amendments suggested by the Patent Office.

The Bureau of the Budget advises there would be no objection to the transmission of this report from the standpoint of the administration's program.

Sincerely,

ROBERT E. GILES, *General Counsel.*

DEPARTMENT OF STATE,
Washington, September 2, 1959.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate.

DEAR SENATOR EASTLAND: I refer to your letter of July 30, 1959, with respect to S. 2429, a bill to amend the act, entitled "An act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of international conventions, and for other purposes," approved July 5, 1946, as amended, and to the Department's interim reply of August 3, 1959.

The Department perceives no objection to the enactment of this bill. Most of its provisions are of a technical nature and are not of direct interest from the foreign policy standpoint. The Department, however, wishes to express its support for section 20 of the bill which would amend the provisions of section 44(b) concerning applicability of the act to nationals of foreign countries. This amendment will provide a clearer basis for the establishment of reciprocal relations with other governments in the field of trademarks. This is, of course, desirable in securing for our own nationals the fullest possible protection abroad of their trademarks.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

WILLIAM B. MACOMBER, Jr.,
Assistant Secretary
(For the Acting Secretary of State).

THE GENERAL COUNSEL OF THE TREASURY,
Washington, August 14, 1959.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

MY DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 2429, to amend the act entitled "An act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of international conventions, and for other purposes", approved July 5, 1946, as amended.

The proposed legislation would amend the so-called Trademark Act of 1946 to correct typographical errors, to clarify language, to make changes in procedure and to make some substantive changes in the law.

Since the proposed legislation relates to matters primarily within the jurisdiction of the Department of Commerce and would not affect any statute administered by the Treasury Department, the Department has no recommendations to make on the bill.

Very truly yours,

NELSON P. ROSE, *General Counsel.*

FEDERAL TRADE COMMISSION,
Washington, D.C., August 11, 1961.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of June 15, 1961, to report on H.R. 4333, 87th Congress, 1st session, a bill to amend the act entitled "an Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions and for other purposes" approved July 5, 1946, as amended.

The bill seeks to amend the Trademark Act of 1946 as to several sections, including that which defines the grounds for cancellation of trademarks which are available to the Federal Trade Commission. The bill, by eliminating surplusage from the provisions of the existing law as to the cancellation of a registration because the trademark has become descriptive obviously is intended to facilitate the removal of registrations from the register by cancellation, when such registrations were acquired, or exist after registration, under circumstances not entitling them to registration.

Section 9 of the subject bill thus amends section 14 of the Trademark Act of 1946 by rewriting the entire section. Subsection (c) of the rewritten section 14, of the subject bill, reads as follows:

"(c) At any time if the registered mark becomes the common descriptive name of an article or substance of has been abandoned
* * *"

This proposed amendment to section 14 of the Trademark Act eliminates the language in the present statute which limits the cancellation of descriptive names to those of articles or substances "on which the patent has expired."

The Commission feels that the proposed subsection (c) of section 14, as provided in section 9 of the subject bill, still limits the cancellation of descriptive names to those which became descriptive after registration.

This limitation, it is believed, will prevent the proposed subsection (c) from serving the purpose of providing as a ground for the cancellation of registrations, the same conditions that would have prevented registration had they existed at the time of application and been known to the Patent Office.

Requests for action by the Federal Trade Commission to exercise the authority granted it by the proviso to subsection (d) of section 14 by the present act (sec. 14(e) as amended by H.R. 4333) have shown that in numerous instances the Patent Office has registered words as trademarks which were descriptive at the time and not recognized as such, because relating to special fields or industries. The need for action in the public interest to terminate trademark monopolies occurs most frequently in connection with marks which are in fact descriptive of the products to which they are applied. In the appeal of *Bart Schwartz International Textiles, Ltd. v. the Federal Trade Commission* (129 U.S.P.Q. 258 decided by the U.S. Court of Customs and Patent Appeals on April 14, 1961), it was held that the Commission could not cancel the registration of "fiocco" merely because it was descriptive and in common use at the time of registration. While this decision was a construction of the intent of the present section 14(c) with the

double limitation imposed by the patent wording and the time implication, it is an indication that the courts will confine cancellation for descriptiveness to situations clearly within the literal wording of the statute and that legislative change will be necessary to permit the cancellation of trademark registrations upon proof of the same facts that would have prevented registration if known to the Patent Office at the time of application.

In order to eliminate any uncertainty that the basic statutory prohibitions of section 2(e), against the registration of marks which are descriptive of the goods of the applicant, can be made effective when discovered after registration as well as before, it is recommended that the subject bill further amend subsection 14(c) of the Trademark Act so that its first provision will read as follows:

“(c) at any time if the registered mark has become, prior or subsequent to registration, the common descriptive name of an article or substance, * * *.”

Any proposal to amend the Trademark Act should, in the opinion of the Commission, include an amendment to the specific wording of the proviso to section 14 which will remove a limitation resulting from an interpretation of the Commissioner of Patents in his 1950 decision in the two early cases of the *Federal Trade Commission v. Elder Mfg. Co. and Royal Mfg. Co.* which were consolidated and reported at 84 U.S.P.Q. 429. The present wording of the proviso was construed by the Commissioner of Patents to limit the authority of the Commission to petition for cancellation of registrations which were initially registered under the provisions of the 1946 act and not to extend to registrations under the prior acts of 1881 and 1905 although the effectiveness of such registrations may have been extended to the present or been renewed by operation of section 46(b) of the act. It is recommended that the following amendment to the proviso be adopted which, in our opinion, should remove any interference of language with the clear intent of Congress, acting in the public interest, to authorize the Commission to apply those grounds of cancellation described in section 14 to all registrations which are subject to cancellation under the provisions of that Section.

It is proposed that the wording of the proviso at the end of section 14, as rewritten by section 9 of H.R. 4333, be changed by striking the words “registered on the principal register established by this act,” and inserting a substitute, therefor, so as to make the entire proviso read: “*Provided*, That the Federal Trade Commission may apply to cancel on the grounds specified in subsections (c) and (e) of this section any mark subject to cancellation under the provisions of this section and the prescribed fee shall not be required.”

The bill also provides in section 21 an amendment to the 11th paragraph of section 45 of the Trademark Act of 1946, by striking the definition contained in said paragraph in its entirety and substituting therefor a new paragraph.

The present paragraph reads:

“The term ‘Service Mark’ means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising used in commerce.”

The proposed substitute paragraph reads:

"The term 'Service Mark' means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor."

It is our belief that the substituted paragraph does improve the general draftsmanship and form of the existing paragraph without adding anything really new except for the last clause, "*notwithstanding that they, or the programs, may advertise the goods of the sponsor.*" The italicized portion is important in that it may discernibly function to allow the enunciator, broadcasting company or advertiser to secure registration of a slogan developed and used in the interest of some product-producing sponsor. The wording seems to state that a separation between the entity rendering the service and the sponsoring patron should not prevent the registration by the rendering service. The italicized language, as a modification by amendment, could be interpreted to sanction the acquisition of rights in promotional material by the broadcasting or advertising services rather than the sponsor for whom the material was prepared and presented. No other purpose is discernible.

We are of the opinion that the proposal to amend section 45 does considerable violence to the whole theory of a "service mark" because it tends to give a party rendering a service a property interest in the results or products of his service which are not related to the service which he performs.

We believe that the only function which the italicized language might possibly perform is to remove a ground for rejection by the Patent Office that the proposed mark advertises the goods of a separate party rather than the registrant's service function. It follows that the advertising agency may acquire an exclusive control of a phrase developed for its client and perhaps could prevent the client using that phrase independently or through another agency. Thus the advertiser may, through the trademark statute, possibly secure control of what is really his client's property.

While it is recognized that the amendment of the definition of "service mark" does not modify language which is the operational basis of the Commission's authority to cancel registrations, the amendment does confuse the basis for registration in an area which may be involved in proceedings by the Commission.

As the agency authorized by the Congress to move in the public interest to terminate the statutory trademark monopoly, when improperly acquired or held by the registrant, the Commission is interested in proposed changes which extend the monopoly without commercial necessity or business justification. The opportunity to comment on the amendments proposed by H.R. 4333, which is afforded by the referral of your committee, is appreciated.

By direction of the Commission.

PAUL RAND DIXON, *Chairman.*

N.B.—Pursuant to regulations, this report was submitted to the Bureau of the Budget on July 12, 1961, and on August 11, 1961, the Bureau of the Budget advised that there is no objection to the sub-

mission of this report from the standpoint of the administration's program.

JOSEPH N. KUZEW, *Acting Secretary.*

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed by the bill as here reported, with matter proposed to be stricken by the bill as here reported, enclosed in black brackets; new language proposed by the bill as here reported is printed in italic:

PUBLIC LAW 489, 79TH CONG., 2D SESS.

(60 Stat. 427)

TITLE I—THE PRINCIPAL REGISTER

SECTION. 1. The owner of a trade-mark used in commerce may register his trade-mark under this Act on the principal register hereby established:

(a) By filing in the Patent Office—

(1) a written application, in such form as may be prescribed by the Commissioner, verified by the applicant, or by a member of the firm or an officer of the corporation or association applying, specifying applicant's domicile and citizenship, the date of applicant's first use of the mark, the date of applicant's first use of the mark in commerce, the goods in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods, and including a statement to the effect that the person making the verification believes himself, or the firm, corporation, or association in whose behalf he makes the verification, to be the owner of the mark sought to be registered, that the mark is in use in commerce, and that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto [as might be calculated to deceive:] *as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive: Provided,* That in the case of every application claiming concurrent use the applicant shall state exceptions to his claim of exclusive use, in which he shall specify, to the extent of his knowledge, any concurrent use by others, the goods [or services] in connection with which and the areas in which each concurrent use exists, the periods of each use, and the goods and area for which the applicant desires registration;

(2) a drawing of the mark; and

(3) such number of specimens or facsimiles of the mark as actually used as may be required by the Commissioner.

(b) By paying into the Patent Office the filing fee.

(c) By complying with such rules or regulations, not inconsistent with law, as may be prescribed by the Commissioner.

(d) If the applicant is not domiciled in the United States he shall designate by a written document filed in the Patent Office the name

and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with him or mailing to him a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner.

MARKS REGISTRABLE ON THE PRINCIPAL REGISTER

SEC. 2. No trade-mark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(a) consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute;

(b) consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof;

(c) consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow;

(d) consists of or comprises a mark which so resembles a mark registered in the Patent Office or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause [confusion or mistake or to deceive purchasers: *Provided*, That the Commissioner may register as concurrent registrations the same or similar marks to more than one registrant when they have become entitled to use such marks as a result of their concurrent lawful use thereof in commerce prior to any of the filing dates of the applications involved and the Commissioner or a court on appeal determines that confusion or mistake of deceit of purchasers is not likely to result from the continued use of said marks under conditions and limitations as to the mode or place of use or the goods in connection with which such registrations may be granted which conditions and limitations shall be prescribed in the grant of the concurrent registrations thereof; and concurrent registrations may be similarly granted by the Commissioner with such conditions and limitations when a court has finally determined that more than one person is entitled to use the same or similar marks in commerce. The Commissioner shall give not less than 30 days written notice to all applicants, registrants, and users specified by any of the parties concerned of any application for concurrent registration and of the time and place of the hearings thereon. When the Commissioner decides to grant a concurrent registration the proposed registration shall be published in the Official Gazette of the Patent Office and the application shall be subject to opposition as hereinafter provided for other applications to register marks. Concurrent registrations may be ordered by a court in an action under the provisions of 35 United States Code, sections 145 or 146, under such conditions and limitations as the court considers proper in accordance herewith.] *confusion, or to cause mistake, or to deceive: Provided, That when the*

Commissioner determines that confusion, mistake or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (i) the earliest of the filing dates of the applications pending or of any regulations issued under this Act; (ii) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (iii) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods in connection with which such mark is registered to the respective persons.

* * * * *

DISCLAIMERS

[SEC. 6. The Commissioner shall require unregistrable matter to be disclaimed, but such disclaimer shall not prejudice or affect the applicant's or owner's rights then existing or thereafter arising in the disclaimed matter, nor shall such disclaimer prejudice or affect the applicant's or owner's rights of registration on another application of later date if the disclaimed matter has become distinctive of the applicant's or owner's goods or services.]

SEC. 6. (a) The Commissioner may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

(b) No disclaimer, including those made under paragraph (d) of section 7 of this Act, shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services.

CERTIFICATES

SEC. 7. (a) Certificates of registration of marks registered upon the principal register shall be issued in the name of the United States of America, under the seal of the Patent Office, and shall **[either]** be signed by the Commissioner or have his **[name printed]** *signature placed* thereon **[and attested by an assistant commissioner or by one of the law examiners duly designated by the Commissioner, and a record thereof, together with printed copies of the drawing and statement of the applicant, shall be kept in books for that purpose.]** *and a record thereof, shall be kept in the Patent Office. The [certificate]* *registration shall reproduce [the drawing of] the mark, and state that the mark is registered on the principal register under this Act, the date of first use of the mark, the date of the first use of the mark in commerce, the particular goods or services for which it is registered,*

the number and date of the registration, the term thereof, the date on which the application for registration was received in the Patent Office, and any conditions and limitations that may be imposed in [the grant of] the registration.

* * * * *

(d) [At any time, upon application of the registrant and payment of the fee herein provided, the Commissioner may permit any registration in the Patent Office to be surrendered, canceled, or for good cause to be amended, and he may permit any registered mark to be disclaimed in whole or in part: *Provided, That the registration when so amended shall still contain registrable matter and the mark as amended shall still be registrable as a whole, and that such amendment or disclaimer does not involve such changes in the registration as to alter materially the character of the mark. The Commissioner shall make appropriate entry upon the records of the Patent Office and upon the certificate of registration or, if said certificate is lost or destroyed, upon a certified copy thereof.* Upon application of the registrant the Commissioner may permit any registration to be surrendered for cancelation, and upon cancelation appropriate entry shall be made in the records of the Patent Office. Upon application of the registrant and payment of the prescribed fee, the Commissioner for good cause may permit any registration to be amended or to be disclaimed in part: *Provided, That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the Patent Office and upon the certificate of registration or, if said certificate is lost or destroyed, upon a certified copy thereof.*

(e) Copies of any records, books, papers or drawings belonging to the Patent Office relating to marks, and copies of [certificates of] registrations, when authenticated by the seal of the Patent Office and certified by the Commissioner, or in his name by [a chief of division] an employee of the Office duly designated by the Commissioner, shall be evidence in all cases wherein the originals would be evidence; and any person making application therefor and paying the fee required by law shall have such copies.

(f) Whenever a material mistake in a registration, incurred through the fault of the Patent Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake [, signed by the Commissioner and sealed with the seal of the Patent Office;] shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration [certificate] and such corrected [certificate] registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Commissioner a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the rules of the Patent Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute.

* * * * *

SEC. 9. [Each registration may be renewed for periods of 20 years from the end of the expiring period upon the filing of an application therefor accompanied by an affidavit by the registrant stating that the mark is still in use in commerce and the payment of the renewal

fee required by this Act; and such application may be made at any time within 6 months before the expiration of the period for which the certificate of registration was issued or renewed, or it may be made within 3 months after such expiration on payment of the additional fee herein provided. [An applicant for renewal not domiciled in the United States shall be subject to and comply with the provisions of section 1(d) hereof.] (a) *Each registration may be renewed for periods of twenty years from the end of the expiring period upon payment of the prescribed fee and the filing of a verified application thereof, setting forth those goods or services recited in the registration on or in connection with which the mark is still in use in commerce and having attached thereto a specimen or facsimile showing current use of the mark, or showing that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. Such application may be made at any time within six months before the expiration of the period for which the registration was issued or renewed, or it may be made within three months after such expiration on payment of the additional fee herein provided.*

(b) *If the Commissioner refuses to renew the registration, he shall notify the registrant of his refusal and the reasons therefor.*

(c) *An applicant for renewal not domiciled in the United States shall be subject to and comply with the provisions of section 1(d) hereof.*

SEC. 10. A registered mark or a mark for which application to register has been filed shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark, and in any such assignment it shall not be necessary to include the goodwill of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted: [Provided, That any assigned registration may be canceled at any time if the registered mark is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used,] Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment and when recorded in the Patent Office the record shall be prima facie evidence of execution. An assignment shall be void as against any subsequent purchaser for a valuable consideration without notice, unless it is recorded in the Patent Office within 3 months after the date thereof or prior to such subsequent purchase. [The Commissioner shall keep a separate record of such assignments submitted to him for recording.] *A separate record of assignments submitted for recording hereunder shall be maintained in the Patent Office.*

An assignee not domiciled in the United States shall be subject to and comply with the provisions of section 1(d) hereof.

* * * * *

PUBLICATION

SEC. 12(a). Upon the filing of an application for registration and payment of the fee herein provided, the Commissioner shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and, if on such examination it shall appear that the applicant is entitled to registration, the Com-

missioner shall cause the mark to be published in the Official Gazette of the Patent Office: *Provided, That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference, as provided for in section 16 of this Act, the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings.*

* * * * *

(c) A registrant of a mark registered under the provision of the Act of March 3, 1881, or the Act of February 20, 1905, may, at any time prior to the expiration of the registration thereof, upon the payment of the prescribed fee file with the Commissioner an affidavit setting forth those goods stated in the registration on which said mark is in use in commerce and that the registrant claims the benefits of this Act for said mark. The Commissioner shall publish notice thereof with a reproduction of said mark in the Official Gazette, and notify the registrant of such publication and of the requirement for the affidavit of use or nonuse as provided for in subsection (b) of section 8 of this Act. **[This]** *marks published under this subsection shall not be subject to the provisions of section 13 of this Act.*

OPPOSITION

SEC. 13. Any person who believes that he would be damaged by the registration of a mark upon the principal register may, upon payment of the required fee, file a verified **[notice of]** opposition in the Patent Office, stating the grounds therefor, within thirty days after the publication under subsection (a) of section 12 of this Act of the mark sought to be registered. For good cause shown, the time for filing **[notice of]** opposition may be extended by the Commissioner, who shall notify the applicant. An unverified opposition may be filed by a duly authorized attorney, but such opposition shall be null and void unless verified by the opposer within a reasonable time after such filing to be fixed by the Commissioner. *An opposition may be amended under such conditions as may be prescribed by the Commissioner.*

CANCELLATION

SEC. 14. **[Any person who believes that he is or will be damaged by the registration of a mark on the principal register established by this Act, or under the Act of March 3, 1881, or the Act of February 20, 1905, may upon the payment of the prescribed fee, apply to cancel said registration—**

(a) within 5 years from the date of the registration of the mark under this Act; or

(b) within 5 years from the date of the publication under section 12(c) hereof of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905; or

(c) at any time if the registered mark becomes the common descriptive name of an article or substance on which the patent has expired, or has been abandoned or its registration was obtained fraudulently or contrary to the provisions of section 4 or of subsections (a), (b), or (c) of section 2 of this Act for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered

mark has been assigned and is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used, or if the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 12 of this Act; or

(d) at any time in the case of a certification mark on the ground that the registrant (1) does not control, or is not able legitimately to exercise control over, the use of such mark, or (2) engages in the production or marketing of any goods or services to which the mark is applied, or (3) permit the use of such mark for other purposes than as a certification mark, or (4) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.

Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in subsections (c) and (d) of this section any mark registered on the principal register established by this Act, and the prescribed fee shall not be required.】 A verified petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed by any person who believes that he is or will be damaged by the registration of a mark on the principal register established by this Act, or under the Act of March 3, 1881, or the Act of February 20, 1905—

(a) *within five years from the date of the registration of the mark under this Act; or*

(b) *within five years from the date of publication under section 12(c) hereof of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905; or*

(c) *at any time if the registered mark becomes the common descriptive name of an article or substance, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 4 or of subsection (a), (b), or (c) of section 2 of this Act for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used; or*

(d) *at any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 12 of this Act; or*

(e) *at any time in the case of a certification mark on the ground that the registrant (1) does not control, or is not able legitimately to exercise control over, the use of such mark, or (2) engages in the production or marketing of any goods or services to which the certification mark is applied, or (3) permits the use of the certification mark for purposes other than to certify, or (4) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.*

Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in subsections (c) and (e) of this section any mark registered on the principal register established by this Act, and the prescribed fee shall not be required.

SEC. 15. Except on a ground for which application to cancel may be filed at any time under subsections (c), and [(d),] (e) of section 14 of this Act, and except to the extent, if any, to which the use of a mark registered on the principal register infringes a valid right acquired under the law of any State or Territory by use of a mark or trade name continuing from a date prior to the date of the publication under this Act of such registered mark, the right of the registrant to use such registered mark in commerce for the goods or services on or in connection with which such registered mark has been in continuous use for 5 consecutive years subsequent to the date of such registration and is still in use in commerce, shall be incontestable: *Provided, That—*

* * * * *

(4) no incontestable right shall be acquired in a mark [or trade-name] which is the common descriptive name of any article or substance, patented or otherwise.

* * * * *

INTERFERENCE

SEC. 16. Whenever application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when applied to the goods or when used in connection with the services of the applicant to cause confusion or mistake or to deceive [purchasers], the Commissioner may declare that an interference exists. No interference shall be declared between an application and the registration of a mark the right to the use of which has become incontestable.

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Sec. 21. [Any applicant for registration of a mark, party to an interference proceeding, party to an opposition proceeding, party to an application to register as a lawful concurrent user, party to a cancellation proceeding, or any registrant who has filed an affidavit as provided in section 8, who is dissatisfied with the decision of the Commissioner or the Trademark Trial and Appeal Board may appeal to the United States Court of Customs and Patent Appeals or may proceed under 35 United States Code, sections 145 and 146, as in the case of applicants for patents, under the same conditions, rules, and procedure as are prescribed in the case of patent appeals or proceedings so far as they are applicable: *Provided, That* any party who is satisfied with the decision of the Trademark Trial and Appeal Board shall, upon the filing of an appeal to the Court of Customs and Patent Appeals by any dissatisfied party, have the right to elect to have all further proceedings under 35 United States Code, section 146, by election as provided in 35 United States Code, section 141. The Commissioner of Patents shall not be a necessary party to an inter partes proceeding under 35 United States Code, section 146, but he shall be notified of the filing of the bill by the clerk of the court in which it is filed and the Commissioner shall have the right to intervene in the action.] (a) (1) *An applicant for registration of a mark, party to an interference proceeding, party to an opposition proceeding, party to an application to register as a lawful concurrent user, party to a*

cancellation proceeding, a registrant who has filed an affidavit as provided in section 8, or an applicant for renewal, who is dissatisfied with the decision of the Commissioner or Trademark Trial and Appeal Board, may appeal to the United States Court of Customs and Patent Appeals thereby waiving his right to proceed under section 21(b) hereof: Provided, That such appeal shall be dismissed if any adverse party to the proceeding, other than the Commissioner, shall within twenty days after the appellant has filed notice of appeal according to section 21(a)(2) hereof, files notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 21(b) hereof. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under said section 21(b), in default of which the decision appealed from shall govern the further proceedings in the case.

(2) When an appeal is taken to the United States Court of Customs and Patent Appeals, the appellant shall give notice thereof to the Commissioner, and shall file in the Patent Office his reasons of appeal, specifically set forth in writing, within such time after the date of the decision appealed from, not less than sixty days, as the Commissioner appoints.

(3) The court shall, before hearing such appeal, give notice of the time and place of the hearing to the Commissioner and the parties thereto. The Commissioner shall transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant and any additional papers and evidence specified by the appellee, and in an ex parte case the Commissioner shall furnish the court with the grounds of the decision of the Patent Office, in writing, touching all the points involved by the reasons of appeal.

(4) The court shall hear and determine such appeal on the evidence produced before the Patent Office, and the decision shall be confined to the points set forth in the reasons of appeal. Upon its determination, the court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent Office and govern the further proceedings in the case.

(b)(1) Whenever a person authorized by section 21(a) hereof to appeal to the United States Court of Customs and Patent Appeals is dissatisfied with the decision of the Commissioner or Trademark Trial and Appeal Board, said person may, unless appeal has been taken to said Court of Customs and Patent Appeals, have remedy by a civil action if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints or as provided in section 21(a). The court may adjudge that an applicant is entitled to a registration upon the application involved, that a registration involved should be canceled, or such other matter as the issues in the proceeding require, as the facts in the case may appear. Such adjudication shall authorize the Commissioner to take any necessary action, upon compliance with the requirements of law.

(2) The Commissioner shall not be made a party to an inter partes proceeding under this subsection, but he shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall have the right to intervene in the action.

(3) In all cases where there is no adverse party, a copy of the complaint shall be served on the Commissioner; and all the expenses of the proceedings shall be paid by the party bringing them, whether the final decision is in his favor or not. In suits brought hereunder, the record in the Patent Office shall be admitted on motion of any party, upon such

terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of any party to take further testimony. The testimony and exhibits of the record in the Patent Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

(4) *Where there is an adverse party, such suit may be instituted against the party in interest as shown by the records of the Patent Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs.*

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TITLE II—THE SUPPLEMENTAL REGISTER

SEC. 23. * * *

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Upon a proper showing by the applicant that he [has begun the lawful use of his mark in foreign commerce and that he] requires domestic registration as a basis for foreign protection of his mark, the Commissioner may waive the requirement of a full year's use and may grant registration forthwith.

CANCELLATION

SEC. 24. Marks for the supplemental register shall not be published for or be subject to opposition, but shall be published on registration in the Official Gazette of the Patent Office. Whenever any person believes that he is or will be damaged by the registration of a mark on this register he may at any time, *upon payment of the prescribed fee and the filing of a verified petition stating the ground therefor*, apply to the Commissioner to cancel such registration. The Commissioner shall refer such application to the Trademark Trial and Appeal Board *which shall give notice thereof to the registrant. If it is found after a hearing before the Board that the registrant was not entitled to register the mark at the time of his application for registration thereof, or that the mark is not used by the registrant or has been abandoned, the registration shall be canceled by the Commissioner.*

* * * * *

TITLE III—NOTICE OF REGISTRATION

SEC. 29. Notwithstanding the provisions of section 22 hereof, a registrant of a mark registered [under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register established by this Act shall] *in the Patent Office may give notice that his mark is registered by displaying with the mark as used the words "Registered in U.S. Patent Office" or "Reg. U.S. Pat. Off." of the letter R enclosed with a circle, thus ®; and in any suit for infringement under this Act.*

by such a registrant failing [so to mark goods bearing the registered mark or by a registrant under the Act of March 19, 1920, or by the registrant of a mark on the supplemental register provided by this Act] to give such notice of registration, no profits and no damages shall be recovered under the provisions of this Act unless defendant had actual notice of the registration.

TITLE IV—CLASSIFICATION

SEC. 30. The Commissioner [shall] may establish a classification of goods and services, for convenience of Patent Office administration, but not to limit or extend the applicant's rights. [The applicant may register his mark in one application for any or all of the goods or services included in one class, upon or in connection with which he is actually using the mark. The Commissioner may issue a single certificate for one mark registered in a plurality of classes upon payment of a fee equaling the sum of the fees for each registration in each class.] *The applicant may file an application to register a mark for any or all of the goods and services upon or in connection with which he is actually using the mark: Provided, That when such goods or services fall within a plurality of classes, a fee equaling the sum of the fees for filing an application in each class shall be paid, and the Commissioner may issue a single certificate of registration for such mark.*

* * * * *

TITLE VI—REMEDIES

SEC. 32. (1) [Any person who shall, in commerce, (a) use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of any registered mark in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers as to the source of origin of such goods or services; or (b) reproduce, counterfeit, copy, or colorably imitate any such mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale in commerce of such goods or services, shall be liable to a civil action by the registrant for any or all of the remedies hereinafter provided, except that under subsection (b) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive purchasers.] Any person who shall, without the consent of the registrant—

(a) *Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or*

(b) *Reproduce, counterfeit, copy or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising*

of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) hereof, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

(2) Notwithstanding any other provision of this Act, the remedies given to the owner of the right infringed shall be limited as follows:

* * * * *

(b) where the infringement complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical the remedies of the owner of the right infringed as against the **[published]** *publisher* or distributor of such newspaper, magazine, or other similar periodical shall be confined to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodical:

* * * * *

SEC. 33. (a) Any **[certificate of]** registration issued under the Act of March 3, 1881, or the Act of February 20, 1905, or of a mark registered on the principal register provided by this Act and owned by a party to an action shall be admissible in evidence and shall be prima facie evidence of registrant's exclusive right to use the registered mark in commerce on the goods or services specified in the **[certificate]** *registration* subject to any conditions or limitations stated therein, but shall not preclude an opposing party from proving any legal or equitable defense or defect which might have been asserted if such mark had not been registered.

(b) If the right to use the registered mark has become incontestable under section 15 hereof, the **[certificate]** *registration* shall be conclusive evidence of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the **[certificate]** *affidavit filed under the provisions of said section 15* subject to any conditions or limitations stated therein except when one of the following defenses or defects is established:

* * * * *

(3) That the registered mark **[has been assigned and]** is being used, by or with the permission of the **[assignee]** *registrant or a person in privity with the registrant*, so as to misrepresent the source of the goods or services in connection with which the mark is used; or

* * * * *

(5) That the mark whose use by a party is charged as an infringement was adopted without knowledge of the registrant's prior use and has been continuously used by such party or those in privity with him from a date prior to **[the]** *registration of the mark under this Act or publication of the registered mark under subsection **[(a) or]** (c) of section 12 of this Act: Provided, however, That this defense or defect shall apply only for the area in which such continuous prior use is proved; or*

(6) That the mark whose use is charged as an infringement was registered and used prior to the registration under this Act or

publication under subsection [(a) or] (c) of section 12 of this Act of the registered mark of the registrant, and not abandoned: *Provided, however,* That this defense or defect shall apply [only where the said mark has been published pursuant to subsection (e) of section 12 and shall apply] only for the area in which the mark was used prior to [the date of] *such registration or such publication* of the registrant's mark [under subsection (a) or (c) of section 12 of this Act]; *or*

* * * * *

SEC. 35. When a violation of any right of the registrant of a mark registered in the Patent Office shall have been established in any civil action arising under this Act, the plaintiff shall be entitled, subject to the provisions of sections 29 and [31(1)(b)] 32, and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action.

* * * * *

TITLE IX—INTERNATIONAL CONVENTIONS

* * * * *

SEC. 44 (b).

[Persons who are nationals of, domiciled in, or have a bona fide and effective business or commercial establishment in any foreign country, which is a party to (1) the International Convention for the Protection of Industrial Property, signed at Paris on March 20, 1883, or (2) the General Inter-American Convention for Trade-Mark and Commercial Protection signed at Washington on February 20, 1929, or (3) any other convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition to which the United States is a party, shall be entitled to the benefits and subject to the provisions of this Act to the extent and under the conditions essential to give effect to any such conventions and treaties so long as the United States shall continue to be a party thereto, except as provided in the following paragraphs of this section.]

Any person whose country of origin is a party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which the United States is also a party, or extends reciprocal rights to nationals of the United States by law, shall be entitled to the benefits of this section under the conditions expressed herein to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of a mark is otherwise entitled by this Act.

* * * * *

(e) A mark duly registered in the country of origin of the foreign applicant may be registered on the principal register if eligible, otherwise on the supplemental register herein provided. The application therefor shall be accompanied by a *certification or a certified copy* of the [application for or] registration in the country of origin of the applicant.

* * * * *

TITLE X—CONSTRUCTION AND DEFINITIONS

SEC. 45. In the construction of this Act, unless the contrary is plainly apparent from the context—

* * * * *

The terms “applicant” and “registrant” embrace the legal representatives, *predecessors*, and successors and assigns of such applicant or registrant.

* * * * *

The terms “trade name” and “commercial name” include individual names and surnames, firm names and trade names used by manufacturers, industrialists, merchants, agriculturalists, and others to identify their businesses, vocations, or occupations; the names or titles lawfully adopted and used by persons, firms, associations, corporations, companies, unions, and any manufacturing, industrial, commercial, agricultural, or other organization engaged in trade or commerce and capable of suing and being sued in a court of law.

* * * * *

【The term “service mark” means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising used in commerce.】

The term “service mark” means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

* * * * *

For the purposes of this Act a mark shall be deemed to be used in commerce (a) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and the goods are sold or transported in commerce and (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce【.】, *or the services are rendered in more than one State or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith.*

* * * * *

The 【terms】 *term* “colorable imitation” includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive 【purchasers】.

* * * * *

The intent of this Act is to regulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce; to protect registered marks used in such 【commerce】 *commerce* from interference by State, or territorial legislation; to protect persons engaged in such commerce against

unfair competition; to prevent fraud and deception in such commerce by the use of reproductions, copies, counterfeits, or colorable imitations of registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trademarks, trade names, and unfair competition entered into between the United States and foreign nations.

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87TH CONGRESS
1ST SESSION

H. R. 4333

[Report No. 1108]

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 1961

Mr. LINDSAY introduced the following bill; which was referred to the Committee on the Judiciary

SEPTEMBER 5, 1961

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946, as amended:

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That paragraph (1) of subsection (a) of section 1 of the
4 Act entitled "An Act to provide for the registration and
5 protection of trademarks used in commerce, to carry out the
6 provisions of certain international conventions, and for other
7 purposes", approved July 5, 1946 (60 Stat. 427), as
8 amended, is amended by striking the words "as might be
9 calculated to deceive" and inserting in lieu thereof "as to

1 be likely, when applied to the goods of such other person, to
2 cause confusion, or to cause mistake, or to deceive"; and
3 by striking the words "or services" from the proviso thereof.

4 SEC. 2. Subsection (d) of section 2 is amended by
5 striking the language beginning with the word "confusion",
6 first appearance, and ending with the word "herewith" at
7 the end of said subsection and inserting in lieu thereof the
8 following: "confusion, or to cause mistake, or to deceive:
9 *Provided*, That when the Commissioner determines that
10 confusion, mistake, or deception is not likely to result from
11 the continued use by more than one person of the same
12 or similar marks under conditions and limitations as to the
13 mode or place of use of the marks or the goods in connec-
14 tion with which such marks are used, concurrent registrations
15 may be issued to such persons when they have become
16 entitled to use such marks as a result of their concurrent
17 lawful use in commerce prior to (i) the earliest of the
18 filing dates of the applications pending *or of any registra-*
19 *tion issued* under this Act; ~~or (ii) the date of a registration~~
20 ~~issued under this Act~~; or ~~(iii)~~ (ii) July 5, 1947, in the case
21 of registrations previously issued under the Act of March 3,
22 1881, or February 20, 1905, and continuing in full force and
23 effect on that date; or ~~(iv)~~ (iii) July 5, 1947, in the case of
24 applications filed under the Act of February 20, 1905, and
25 registered after July 5, 1947. Concurrent registrations may

1 also be issued by the Commissioner when a court of compe-
 2 tent jurisdiction has finally determined that more than one
 3 person is entitled to use the same or similar marks in com-
 4 merce. In issuing concurrent registrations, the Commissioner
 5 shall prescribe conditions and limitations as to the mode or
 6 place of use of the mark or the goods in connection with
 7 which such mark is registered to the respective persons.”

8 SEC. 3. Section 6 is amended by striking the entire sec-
 9 tion and inserting in lieu thereof the following:

10 “SEC. 6. (a) The Commissioner may require the appli-
 11 cant to disclaim an unregistrable component of a mark other-
 12 wise registrable. An applicant may voluntarily disclaim a
 13 component of a mark sought to be registered.

14 “(b) No ~~disclaimer heretofore or hereafter made, or~~
 15 *disclaimer, including those* made under paragraph (d) of
 16 section 7 of this Act, shall prejudice or affect the applicant’s
 17 or registrant’s rights then existing or thereafter arising in the
 18 disclaimed matter, or his right of registration on another ap-
 19 plication if the disclaimed matter be or shall have become
 20 distinctive of his goods or services.”

21 SEC. 4. The first sentence of subsection (a) of section
 22 7 is amended by striking therefrom the word “either”; by
 23 striking the words “name printed” and inserting in lieu
 24 thereof the words “signature placed”; by striking the words
 25 “and attested by an assistant commissioner or by one of the

1 law examiners duly designated by the Commissioner,” and
2 by striking the words “and a record thereof, together with
3 printed copies of the drawing and statement of the appli-
4 cant, shall be kept in books for that purpose” and inserting
5 in lieu thereof the words “, and a record thereof shall be
6 kept in the Patent Office.” The second sentence of subsec-
7 tion (a) of section 7 is amended by striking therefrom the
8 word “certificate” and inserting the word “registration” in
9 lieu thereof; by striking therefrom the words “the drawing
10 of”; and by striking the words “the grant of”.

11 Subsection (d) of section 7 is amended by striking the
12 entire subsection and inserting in lieu thereof the following:
13 “Upon application of the registrant the Commissioner may
14 permit any registration to be surrendered for ~~cancellation~~
15 *cancelation*, and upon ~~cancellation~~ *cancelation* appropriate
16 entry shall be made in the records of the Patent Office.
17 Upon application of the registrant and payment of the pre-
18 scribed fee, the Commissioner for good cause may permit any
19 registration to be amended or to be disclaimed in part: *Pro-*
20 *vided*, That the amendment or disclaimer does not alter
21 materially the character of the mark. Appropriate entry
22 shall be made in the records of the Patent Office and upon the
23 certificate of registration or, if said certificate is lost or de-
24 stroyed, upon a certified copy thereof.”

25 Subsection (e) of section 7 is amended by striking the

1 words "certificates of"; by adding an "s" to the word "regis-
2 tration"; and striking the words "a chief of division" and
3 inserting in lieu thereof "an employee of the Office".

4 Subsection (f) of section 7 is amended by striking from
5 the first sentence the words ", signed by the Commissioner
6 and sealed with the seal of the Patent Office"; by striking
7 the word "certificate", second occurrence; and by striking
8 the word "certificate", third occurrence, and inserting the
9 word "registration" in lieu thereof.

10 SEC. 5. Section 9 is amended by striking the entire
11 section and inserting in lieu thereof the following:

12 "SEC. 9. (a) Each registration may be renewed for
13 periods of twenty years from the end of the expiring period
14 upon payment of the prescribed fee and the filing of a veri-
15 fied application therefor, setting forth those goods or services
16 recited in the registration on or in connection with which
17 the mark is still in use in commerce and ~~attaching~~ *having at-*
18 *tached* thereto a specimen or facsimile showing current use of
19 the mark, or showing that any nonuse is due to special cir-
20 cumstances which excuse such nonuse and it is not due to any
21 intention to abandon the mark. Such application may be
22 made at any time within six months before the expiration of
23 the period for which the registration was issued or renewed,
24 or it may be made within three months after such expiration
25 on payment of the additional fee herein ~~provided~~ *prescribed*.

1 “(b) If the Commissioner refuses to renew the regis-
2 tration, he shall notify the registrant of his refusal and the
3 reasons therefor.

4 “(c) An applicant for renewal not domiciled in the
5 United States shall be subject to and comply with the pro-
6 visions of section 1 (d) hereof.”

7 SEC. 6. Section 10 is amended by changing the colon
8 following the word “conducted” to a period and striking the
9 words “*Provided*, That any assigned registration may be
10 canceled at any time if the registered mark is being used by,
11 or with the permission of, the assignee so as to misrepresent
12 the source of the goods or services in connection with which
13 the mark is used”; and striking the sentence “The Commis-
14 sioner shall keep a separate record of such assignments sub-
15 mitted to him for recording.” and inserting in lieu thereof
16 “A separate record of assignments submitted for recording
17 hereunder shall be maintained in the Patent Office.”

18 SEC. 7. Subsection (a) of section 12 is amended by
19 changing the period at the end thereof to a colon and insert-
20 ing after the colon the following: “*Provided*, That in the case
21 of an applicant claiming concurrent use, or in the case of an
22 application to be placed in an interference as provided for in
23 section 16 of this Act, the mark, if otherwise registrable,
24 may be published subject to the determination of the rights
25 of the parties to such proceedings.”

1 Subsection (c) of section 12 is amended by striking
2 therefrom the first word of the last sentence and inserting in
3 lieu thereof the words "Marks published under this".

4 SEC. 8. Section 13 is amended by striking the words
5 "notice of" each occurrence, and by adding at the end thereof
6 the following sentence: "An opposition may be amended
7 under such conditions as may be prescribed by the Com-
8 missioner."

9 SEC. 9. Section 14 is amended by striking said section
10 in its entirety and inserting in lieu thereof the following:

11 "SEC. 14. A verified petition to cancel a registration of
12 a mark, stating the grounds relied upon, may, upon payment
13 of the prescribed fee, be filed by any person who believes
14 that he is or will be damaged by the registration of a mark
15 on the principal register established by this Act, or under the
16 Act of March 3, 1881, or the Act of February 20, 1905—

17 "(a) within five years from the date of the regis-
18 tration of the mark under this Act; or

19 "(b) within five years from the date of publica-
20 tion under section 12 (c) hereof of a mark registered
21 under the Act of March 3, 1881, or the Act of February
22 20, 1905; or

23 "(c) at any time if the registered mark becomes
24 the common descriptive name of an article or substance,
25 or has been abandoned, or its registration was obtained

1 fraudulently or contrary to the provisions of section 4
2 or of subsections (a), (b), or (c) of section 2 of this
3 Act for a registration hereunder, or contrary to similar
4 prohibitory provisions of said prior Acts for a registra-
5 tion thereunder, or if the registered mark is being used
6 by, or with the permission of, the registrant so as to
7 misrepresent the source of the goods or services in con-
8 nection with which the mark is used; or

9 “(d) at any time if the mark is registered under
10 the Act of March 3, 1881, or the Act of February 20,
11 1905, and has not been published under the provisions
12 of subsection (c) of section 12 of this Act; or

13 “(e) at any time in the case of a certification mark
14 on the ground that the registrant (1) does not control,
15 or is not able legitimately to exercise control over, the
16 use of such mark, or (2) engages in the production or
17 marketing of any goods or services to which the certi-
18 fication mark is applied, or (3) permits the use of the
19 certification mark for purposes other than to certify, or
20 (4) discriminately refuses to certify or to continue to
21 certify the goods or services of any person who main-
22 tains the standards or conditions which such mark
23 certifies:

24 “*Provided*, That the Federal Trade Commission may apply
25 to cancel on the grounds specified in subsections (c) and (e)

1 of this section any mark registered on the principal register
2 established by this Act, and the prescribed fee shall not be
3 required.”

4 SEC. 10. Section 15 is amended by striking “(c) and
5 (d)” in the first paragraph and inserting in lieu thereof the
6 following: “(c) and (e)”.

7 Section 15 is amended by striking “or trade name” from
8 paragraph numbered (4).

9 SEC. 11. Section 16 is amended by striking therefrom
10 the word “purchasers”.

11 SEC. 12. Section 21 is amended by striking the entire
12 section, and inserting in lieu thereof the following:

13 “SEC. 21. (a) (1) An applicant for registration of a
14 mark, party to an interference proceeding, party to an op-
15 position proceeding, party to an application to register as a
16 lawful concurrent user, party to a cancellation proceeding,
17 a registrant who has filed an affidavit as provided in section
18 8, or an applicant for renewal, who is dissatisfied with the
19 decision of the Commissioner or Trademark Trial and Ap-
20 peal Board, may appeal to the United States Court of Cus-
21 toms and Patent Appeals thereby waiving his right to
22 proceed under section 21 (b) hereof: *Provided*, That such
23 appeal shall be dismissed if any adverse party to the pro-
24 ceeding, other than the Commissioner, shall, within twenty

1 days after the appellant has filed notice of appeal according
2 to section 21 (a) (2) hereof, files notice with the Commis-
3 sioner that he elects to have all further proceedings con-
4 ducted as provided in section 21 (b) hereof. Thereupon
5 the appellant shall have thirty days thereafter within which
6 to file a civil action under said section 21 (b), in default of
7 which the decision appealed from shall govern the further
8 proceedings in the case.

9 “(2) When an appeal is taken to the United States
10 Court of Customs and Patent Appeals, the appellant shall
11 give notice thereof to the Commissioner, and shall file in
12 the Patent Office his reasons of appeal, specifically set forth
13 in writing, within such time after the date of the decision
14 appealed from, not less than sixty days, as the Commissioner
15 appoints.

16 “(3) The court shall, before hearing such appeal, give
17 notice of the time and place of the hearing to the Commis-
18 sioner and the parties thereto. The Commissioner shall
19 transmit to the court certified copies of all the necessary
20 original papers and evidence in the case specified by the
21 appellant and any additional papers and evidence specified
22 by the appellee, and in an ex parte case the Commissioner
23 shall furnish the court with the grounds of the decision of
24 the Patent Office, in writing, touching all the points involved
25 by the reasons of appeal.

1 “(4) The court shall hear and determine such appeal
2 on the evidence produced before the Patent Office, and the
3 decision shall be confined to the points set forth in the
4 reasons of appeal. Upon its determination, the court shall
5 return to the Commissioner a certificate of its proceedings
6 and decision, which shall be entered of record in the Patent
7 Office and govern the further proceedings in the case.

8 “(b) (1) Whenever a person authorized by section 21
9 (a) hereof to appeal to the United States Court of Customs
10 and Patent Appeals is dissatisfied with the decision of the
11 Commissioner or Trademark Trial and Appeal Board, said
12 person may, unless appeal has been taken to said Court of
13 Customs and Patent Appeals, have remedy by a civil action
14 if commenced within such time after such decision, not less
15 than sixty days, as the Commissioner appoints or as provided
16 in section 21 (a). The court may adjudge that an applicant
17 is entitled to a registration upon the application involved,
18 that a registration involved should be canceled, or such other
19 matter as the issues in the proceeding require, as the facts in
20 the case may appear. Such adjudication shall authorize the
21 Commissioner to take any necessary action, upon compliance
22 with the requirements of law.

23 “(2) The Commissioner shall not be made a party to an
24 inter partes proceeding under this subsection, but he shall
25 be notified of the filing of the complaint by the clerk of

1 the court in which it is filed and shall have the right to
2 intervene in the action.

3 “(3) In all cases where there is no adverse party, a
4 copy of the complaint shall be served on the Commissioner;
5 and all the expenses of the proceedings shall be paid by
6 the party bringing them, whether the final decision is in
7 his favor or not. In suits brought hereunder, the record in
8 the Patent Office shall be admitted on motion of any party,
9 upon such terms and conditions as to costs, expenses, and
10 the further cross-examination of the witnesses as the court
11 imposes, without prejudice to the right of any party to take
12 further testimony. The testimony and exhibits of the record
13 in the Patent Office, when admitted, shall have the same
14 effect as if originally taken and produced in the suit.

15 “(4) Where there is an adverse party, such suit may
16 be instituted against the party in interest as shown by the
17 records of the Patent Office at the time of the decision com-
18 plained of, but any party in interest may become a party
19 to the action. If there be adverse parties residing in a
20 plurality of districts not embraced within the same State,
21 or an adverse party residing in a foreign country, the United
22 States District Court for the District of Columbia shall have
23 jurisdiction and may issue summons against the adverse
24 parties directed to the marshal of any district in which any
25 adverse party resides. Summons against adverse parties

1 residing in foreign countries may be served by publication
2 or otherwise as the court directs.”

3 SEC. 13. Section 23 is amended by striking from the
4 last paragraph thereof the words “has begun the lawful use
5 of his mark in foreign commerce and that he”.

6 SEC. 14. Section 24 is amended by inserting in the
7 second sentence thereof, following the word “time”, the
8 following: “, upon payment of the prescribed fee and the
9 filing of a verified petition stating the ground therefor,”; and
10 by inserting in the third sentence following the word “Board”
11 the word “which”.

12 SEC. 15. Section 29 is amended by deleting the follow-
13 ing: “under the Act of March 3, 1881, or the Act of Feb-
14 ruary 20, 1905, or on the principal register established by
15 this Act, shall” and inserting in lieu thereof the following:
16 “~~In~~ in the Patent Office, may”; and by deleting “so to mark
17 goods bearing the registered mark, or by a registrant under
18 the Act of March 19, 1920, or by the registrant of a mark
19 on the supplemental register provided by this Act” and in-
20 serting in lieu thereof “to give such notice of registration,”.

21 SEC. 16. Section 30 is amended by striking the word
22 “shall” in the first sentence and inserting in lieu thereof the
23 word “may”; and by striking therefrom all of said section
24 except the first sentence thereof and inserting in lieu thereof
25 the following: “The applicant may file an application to

1 register a mark for any or all of the goods and services upon
2 or in connection with which he is actually using the mark:
3 *Provided*, That when such goods or services fall within a
4 plurality of classes, a fee equaling the sum of the fees for
5 filing an application in each class shall be paid, and the Com-
6 missioner may issue a single certificate of registration for
7 such mark."

8 SEC. 17. Subsection (1) of section 32 is amended by
9 striking the entire subsection and inserting in lieu thereof
10 the following:

11 "Any person who shall, without the consent of the
12 registrant—

13 "(a) use in commerce any reproduction, counter-
14 feit, copy, or colorable imitation of a registered mark in
15 connection with the sale, offering for sale, distribution, or
16 advertising of any goods or services on or in connection
17 with which such use is likely to cause confusion, or to
18 cause mistake, or to deceive; or

19 "(b) reproduce, counterfeit, copy, or colorably imi-
20 tate a registered mark and apply such reproduction,
21 counterfeit, copy, or colorable imitation to labels, signs,
22 prints, packages, wrappers, receptacles or advertise-
23 ments intended to be used in commerce upon or in con-
24 nection with the sale, offering for sale, distribution, or

1 advertising of goods or services on or in connection with
2 which such use is likely to cause confusion, or to cause
3 mistake, or to deceive.

4 shall be liable in a civil action by the registrant for the
5 remedies hereinafter provided. Under subsection (b) hereof,
6 the registrant shall not be entitled to recover profits or dam-
7 ages unless the acts have been committed with knowledge
8 that such imitation is intended to be used to cause confusion,
9 or to cause mistake, or to deceive.”

10 Paragraph (b) of subsection (2) of section 32 is
11 amended by striking the word “published” and inserting in
12 lieu thereof the word “publisher”.

13 SEC. 18. Subsection (a) of section 33 is amended by
14 striking therefrom the words “certificate of” in the first
15 line, and changing “certificate”, second appearance, to regis-
16 tration”.

17 Subsection (b) of section 33 is amended by striking
18 the word “certificate”, first appearance, and inserting the
19 word “registration” in lieu thereof and by striking therefrom
20 the word “certificate”, second appearance, and inserting in
21 lieu thereof “affidavit filed under the provisions of said sec-
22 tion 15”.

23 Paragraph (3) of subsection (b) of section 33 is
24 amended by striking therefrom the words “has been assigned

1 and"; and by striking therefrom the word "assignee" and
2 inserting in lieu thereof the words "registrant or a person
3 in privity with the registrant".

4 Paragraph (5) of subsection (b) of section 33 is
5 amended by striking therefrom the word "the" following
6 the words "date prior to" and inserting in lieu thereof the
7 words "registration of the mark under this Act or"; by
8 striking therefrom "(a) or" following the word "subsec-
9 tion"; and by changing the period to "; or".

10 Paragraph (6) of subsection (b) of section 33 is
11 amended by inserting the words "registration under this
12 Act or" after the word "the", second appearance; by
13 striking therefrom "(a) or" following the word "subsec-
14 tion", first appearance; by striking from the proviso the
15 words "only where the said mark has been published pur-
16 suant to subsection (c) of section 12 and shall apply";
17 by striking the words "the date of" following the words
18 "prior to" in said proviso and inserting in lieu thereof "such
19 registration or such"; by striking therefrom the words "under
20 subsection (a) or (c) of section 12 of this Act"; and by
21 changing the period to "; or".

22 SEC. 19. Section 35 is amended by striking "31 (1)
23 (b) " and inserting in lieu thereof "32".

24 SEC. 20. Subsection (b) of section 44 is amended by

1 striking said subsection in its entirety and inserting in lieu
2 thereof the following:

3 “(b) Any person whose country of origin is a party
4 to any convention or treaty relating to trademarks, trade or
5 commercial names, or the repression of unfair competition,
6 to which the United States is also a party, or extends re-
7 ciprocal rights to nationals of the United States by law, shall
8 be entitled to the benefits of this section under the conditions
9 expressed herein to the extent necessary to give effect to any
10 provision of such convention, treaty or reciprocal law, in ad-
11 dition to the rights to which any owner of a mark is other-
12 wise entitled by this Act.”

13 Subsection (e) of section 44 is amended by inserting
14 after the word “a” in the second sentence the words “certifi-
15 cation or a”; and by striking from said second sentence the
16 words “application for or”.

17 SEC. 21. Section 45 is amended as follows: The sixth
18 paragraph of said section, relating to the definition of “ap-
19 plicant, registrant”, is amended by changing “and”, second
20 appearance, to “, predecessors,”.

21 The ninth paragraph of said section, relating to the
22 meaning of the terms “trade name” and “commercial name”,
23 is amended by inserting a comma between the words “com-
24 mercial” and “agricultural”.

1 The eleventh paragraph of said section, being the defini-
2 tion of "service mark", is amended by striking the definition
3 in its entirety and inserting in lieu thereof:

4 "The term 'service mark' means a mark used in the sale
5 or advertising of services to identify the services of one
6 person and ~~distinguished~~ *distinguish* them from the services
7 of others. Titles, character names and other distinctive fea-
8 tures of radio or television programs may be registered as
9 service marks notwithstanding that they, or the programs,
10 may advertise the goods of the sponsor."

11 The fifteenth paragraph of said section, relating to use
12 in commerce, is amended by changing the period at the end
13 of said paragraph to a comma and adding the words "or
14 the services are rendered in more than one State or in this
15 and a foreign country and the person rendering the services
16 is engaged in commerce in connection therewith."

17 The seventeenth paragraph of said section, relating to
18 the meaning of the term "colorable imitation", is amended
19 by changing "terms" to "term" and deleting the word "pur-
20 chasers" at the end thereof.

21 The final paragraph of said section is amended by strik-
22 ing therefrom the word "commence" and inserting in lieu
23 thereof the word "commerce".

87TH CONGRESS
1ST SESSION

H. R. 4333

[Report No. 1108]

A BILL

To amend the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946, as amended.

By Mr. LINDSAY

FEBRUARY 15, 1961

Referred to the Committee on the Judiciary

SEPTEMBER 5, 1961

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

House

Sept 15, 1961

annual premium rate of pay rather than the aggregate rate, otherwise known as saved pay. p. 18829

15. TRADEMARKS. Considered H. R. 4333, providing various amendments to the laws providing for the registration and protection of trademarks (pp. 18820-2). The "Daily Digest" states that this bill was passed. p. D870
16. COMPACTS. Passed as reported H. R. 7855, granting the consent of Congress to an amendment to a compact ratified by Louisiana and Texas relating to the waters of the Sabine River. pp. 18822-3
17. BOTANIC GARDEN. At the request of Rep. Gross, passed over without prejudice H. R. 5628, to provide for a study and investigation of the desirability and feasibility of establishing and maintaining the National Tropical Botanic Garden. p. 18818
18. EASEMENTS. At the request of Rep. McIntire, passed over without prejudice H. R. 8355, to authorize executive agencies to grant easements in, over, or upon real property of the U. S. under the control of such agencies. p. 18188
19. LEGISLATIVE PROGRAM. Rep. Albert announced that the Private Calendar will be called on Wed. p. 18865

SENATE

20. FARM PROGRAM. Sen. Humphrey discussed the role of American agriculture in our foreign aid program, stated that the areas in the world where Communist infiltration and control today constitute the greatest threat are agricultural areas, and stated that American agriculture can contribute to the foreign aid program by providing technological know-how for agricultural production, educational background and training for successful farming, economic and social know-how for land ownership, credit needs, and processing and marketing techniques, and assistance in developing peoples institutions, primarily co-operatives and rural credit unions. pp. 18720-1
Sen. Mundt inserted a speech by Rep. Berry in which he criticized the farm program and the area redevelopment program, stating that "During the past 10 years farm support programs have cost the American taxpayer about \$26 billion. During the same period we imported agricultural products valued at nearly \$42 billion." pp. 18811-12
21. PERSONNEL. Passed as reported H. R. 8765, to amend and clarify the reemployment provisions of the Universal Military Training and Services Act. p. 18741
22. PUBLIC LANDS. The Public Works Committee reported without amendment H. R. 7888, to extend the time within which land in certain reservoir projects in Texas may be reconveyed to the former owners (S. Rept. 1079). p. 18702
23. FOREIGN TRADE. Sen. Humphrey expressed concern over a petition pending before the Office of Civil and Defense Mobilization to establish either quotas or duties on the imports of farm twines, stating that the "effects on the American farmer of an adverse decision which would restrict the importation of farm twines into the United States would be very serious." pp. 18719-20
Sen. Dirksen stated that proposals of the European Economic Commission on some of our major agricultural export items "would greatly injure our current

agricultural trade," and urged the European Economic Community "to give us fair treatment for the exports of our agricultural commodities to this market."
p. 18732

24. APPROPRIATIONS. Received from the President supplemental appropriation estimates for fiscal years 1962 and 1961 (this supplemental does not include any items for this Department) (S. Doc: 51). p. 18701
25. SUGAR. The names of Sens. Carlson and Morse were added as cosponsors of S. 2526, to amend and extend the provisions of the Sugar Act of 1948. p. 18704
26. LEGISLATIVE ACCOMPLISHMENTS. Sen. Mansfield inserted a summary of major legislative action taken by the Senate through Sept. 15, 1961, as prepared by the Senate Democratic policy committee. pp. 18705-10
27. FISH FLOUR. Sens. Saltonstall and Douglas discussed the development of a new food product, fish flour, and Sen. Saltonstall stated that "Many top officials of the Federal Government believe now that whole fish flour offers an early solution to the problem of world hunger." pp. 18715-6
28. ELECTRIFICATION. Sen. Bennett charged that "the doctrinaire all-out espousal of public power by Secretary of Interior Stewart L. Udall is seriously threatening the future of the entire reclamation program," and inserted two articles on this subject. pp. 18729-30
29. VIRGIN ISLANDS. Passed over, at the request of Sen. Hart, H. R. 4750, to amend the Virgin Islands Corporation Act so as to increase the borrowing authority of the Corporation. p. 18741

ITEMS IN APPENDIX

30. FOOD FOR PEACE. Extension of remarks of Rep. Cooley stating that "I believe that the productivity of America's farmers is the greatest stabilizing force in the economy of the free world," and inserting an article in support of the food for peace program. pp. A7363-5
31. PEACE CORPS. Speech in the House by Rep. Lane in support of the establishment of a Peace Corps "as the first original and promising idea in the field of foreign relations that gets to the heart of the situation." pp. A7369-70
32. MEATPACKERS. Extension of remarks of Rep. Roosevelt commending Secretary Freeman, and this Department "under his able leadership" for the "prompt action against seven meatpacking companies, three national food store chains, and two lamb dealers for violation of the Packers and Stockyards Act." pp. A7372-3
33. APPROPRIATIONS. Extension of remarks of Rep. Whitten discussing his 19 years of service on the Appropriations Committee. pp. A7390-1

BILLS INTRODUCED

34. FORESTRY. H. R. 9274, by Rep. Grant, to authorize the Secretary of Agriculture to encourage and assist the several States in carrying on a program of forestry research; to Agriculture Committee.

SEC. 2. When the Congress has authorized the projects recommended in such joint reports, those recommended works of improvement located on or along a stream or other waterway having a drainage area above such improvements of more than two hundred and fifty thousand acres, and those recommended local protection works situated within the boundaries of urban areas within drainage areas of two hundred and fifty thousand acres or less which constitute a substantial part of the recommended works of improvement for such drainage areas, shall be prosecuted by the Secretary of the Army under the provisions of the Flood Control Act of 1936, as amended and supplemented; and those recommended works of improvement located on or along a stream or other waterway having a drainage area above such improvements of two hundred and fifty thousand acres or less, except for such local protection works as are mentioned above, shall be carried out by local organizations with assistance from the Secretary of Agriculture under the provisions of the Watershed Protection and Flood Prevention Act, as amended: *Provided*, That such joint reports shall contain an economic justification for the recommended system of works of improvement, and no further economic justification shall be required in connection with plans for such works of improvement prepared under the provisions of the Flood Control Act of 1936, as amended and supplemented, or the Watershed Protection and Flood Prevention Act, as amended.

As I say, in 1948 we provided that where one's responsibility ceased, that of the other started. Certainly they should cooperate, and they do cooperate now and have been doing so for many years in these plans and in these programs. I do know the Corps' interest and effort in this area has lagged far behind that of the Department of Agriculture. If these changes are made in the bill I would certainly want the assurance of the gentleman that this legislation will not be used in such a way that one department could veto the program of the other, because that could lead to a slowdown of the very vital work we have been getting through the cooperation of these two departments.

Mr. EDMONDSON. Mr. Speaker, I think the gentleman makes a very fine point, and I would certainly agree with him, that if this bill were to operate in that way, it would be to the disadvantage of the overall program in which we are all interested. But it is my understanding that joint surveys of this type and joint reports would only be undertaken where both agencies have felt that it was desirable to do this and where Members of Congress have joined in and asked that it be done. It is further my understanding that the people in the Soil Conservation Service were responsible for the drafting of this bill in the first place.

Mr. WHITTEN. They advise me that it was drafted on request, that they did not request nor approve the legislation. Further, it is my opinion that unless these amendments are adopted, they are opposed to it. I am sure the gentleman is familiar with the fact that they have been cooperating in the planning so that each would fit in with the other; is that correct?

Mr. EDMONDSON. I think there has been some fine cooperation in some of the planning, but on the other hand

there have been situations where there has not been a coordination of planning and where parallel planning operations have been going forward without the degree of concentration that would benefit the public and the Government that we would like to see.

Mr. WHITTEN. For the gentleman's committee to inject themselves into that area—with the best of intentions—does the gentleman think that would improve that situation or should we call on each of the services to cooperate more fully on matters of that sort?

Mr. EDMONDSON. Mr. Speaker, may I say to the gentleman that there is certainly no intention in this bill to strong-arm cooperation in a field where cooperation would seem to be in the best interests of everyone. This simply provides a mechanism for cooperative effort where it appears to be in order and where both agencies are agreeable to that approach. We do not have that mechanism in the law today for joint surveys and reports.

Mr. WHITTEN. It is not required by law, but let me say to the gentleman that in the many years that I have been here the Soil Conservation Service and the Corps of Engineers have consistently been given responsibility in different areas and have cooperated in carrying them out. It goes back to the Flood Control Act of 1946 which affected large sections of my area. Reports covering the facts were made by both services, in connection with plans for works of improvement. That act provided for the responsibility of each. May I say again that in 1948 we provided by law that where the responsibility of one ceases the other begins. May I say further that since that time we have had full coordination between the departments. I only wish we could have gotten the Corps to move more speedily. On the gentleman's assurance that we will have the cooperation of the gentleman's committee to keep this bill from being used to slow down the operations that are going on now, I will withdraw my reservation of objection, Mr. Speaker.

Mr. EDMONDSON. Mr. Speaker, I thank the gentleman.

Mr. BAILEY. Mr. Speaker, further reserving the right to object, I do so for the purpose of eliciting some information. Within recent weeks I have been processing an upstream development project before the House Committee on Agriculture. It appears from the consideration of this project that the other body has asked the General Accounting Office to make a report of the project cost, and the other body used that as a means of objecting to the consideration of the project.

May I ask the gentleman from Oklahoma or the gentleman from Mississippi, is there anything that would authorize the calling in of the General Accounting Office? I thought they were engaged in postaudit activities for the Congress and were not in the position of giving advice.

Mr. WHITTEN. Mr. Speaker, if the gentleman will yield to me, the responsibility of the General Accounting Office is rather broad. Normally they pass on

whether the expenditure of money is authorized for the purposes for which it is spent.

On the assurance of the gentleman from Oklahoma that that would not be so used, I have withdrawn any objection. When you get to the General Accounting Office, may I say that those of us on the committee handling the appropriations would be glad to cooperate with the gentleman in connection with his project, but I have not had a chance to study what the General Accounting Office can do in such circumstances. I would presume they would be making some point that certain funds were not in accord with authority.

Mr. BAILEY. Does the gentleman from Oklahoma have any comment on the matter?

Mr. EDMONDSON. The gentleman is apparently referring to a project that is under the jurisdiction of the Agricultural Committee rather than the Public Works Committee. The gentleman from Oklahoma is not familiar with that particular project or with the procedure the gentleman has referred to. It does seem to be a rather unusual approach to the justification for a project, but, as I say, I am unacquainted with the background of it and would not have an opportunity to answer the gentleman.

(Mr. SMITH of Mississippi asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. SMITH of Mississippi. Mr. Speaker, I regret that I was not in the Chamber at the time discussion on H.R. 3801 started. This legislation means much to water resource development throughout the country, but it perhaps means more to the immediate future of our flood control program in Mississippi than any other item now before the Congress. All of the leaders in water resources legislation in the Congress are familiar with the terms of the bill and concur in its passage. I have personally checked with most of them, including the gentleman from Texas, Mr. POAGE, the co-author of the Small Watershed Act. My bill has been carefully drafted to avoid any conflict of jurisdiction in the Congress. It is designated to speed up the essential work in this field which has been so long delayed.

H.R. 3801 is a product of long consideration by the House Subcommittee on Watershed Development. Members of this subcommittee have been seeking every possible means of bringing about better coordination of the important water resource programs carried on by both the Corps of Engineers and the Soil Conservation Service.

Members of our committee have specifically visited areas in Mississippi where joint programs are just beginning and we have been assured by all concerned that a program of this type will greatly benefit their operations.

I regret that there has been any delay in approval of this legislation by the House. It is one of the major steps forward that we must take in order to achieve our goal of full control of floods and soil erosion.

The SPEAKER pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Army and the Secretary of Agriculture, when authorized to do so by resolutions adopted by the Committee on Public Works of the Senate or the Committee on Public Works of the House of Representatives, are hereby authorized and directed to make joint investigations and surveys in accordance with their existing authorities of watershed areas in the United States, Puerto Rico, and the Virgin Islands, and to prepare joint reports on such investigations and surveys setting forth their recommendations for the installation of the works of improvement needed for flood prevention or the conservation, development, utilization, and disposal of water, and for flood control and allied purposes. Such joint reports shall be submitted to the Congress through the President for adoption and authorization by the Congress of the recommended works of improvement.

SEC. 2. When the Congress has authorized the projects recommended in such joint reports, those recommended works of improvement located on or along a stream or other waterway having a drainage area above such improvements of more than two hundred and fifty thousand acres, and those recommended local protection works situated within the boundaries of urban areas within drainage areas of two hundred and fifty thousand acres or less which constitute a substantial part of the recommended works of improvement for such drainage areas, shall be prosecuted by the Secretary of the Army under the provisions of the Flood Control Act of 1936, as amended and supplemented; and those recommended works of improvement located on or along a stream or other waterway having a drainage area above such improvements of two hundred and fifty thousand acres or less, except for such local protection works as are mentioned above, shall be carried out by local organizations with assistance from the Secretary of Agriculture under the provisions of the Watershed Protection and Flood Prevention Act, as amended: *Provided*, That such joint reports shall contain an economic justification for the recommended system of works of improvement, and no further economic justification shall be required in connection with plans for such works of improvement prepared under the provisions of the Flood Control Act of 1936, as amended and supplemented, or the Watershed Protection and Flood Prevention Act, as amended.

SEC. 3. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act, such sums to remain available until expended.

With the following committee amendments:

Page 2, line 11, strike out the period and insert in lieu thereof a colon and the following: "*Provided*, That the project authorization procedure established by Public law 566, 83d Congress, as amended, shall not be affected."

Strike out "SEC. 2" and renumber "SEC. 3" as "SEC. 2".

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

REGISTRATION AND PROTECTION OF TRADEMARKS

The Clerk called the bill (H.R. 4333) to amend the act entitled "An act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes," approved July 5, 1946, as amended.

The SPEAKER pro tempore. Is there objection to the present consideration of the bill?

Mr. GROSS. Reserving the right to object, Mr. Speaker, I note in the report on this bill a letter from the Chairman of the Federal Trade Commission, Mr. Dixon, who states on page 13 that the proposal to amend section 45 does considerable violence to the whole theory of a "service mark" because it tends to give a party rendering a service a property interest in the results or products of his service which are not related to the service which he performs.

I wonder if there is someone on the committee who can tell me whether this objection by the Chairman of the FTC, has been met.

Mr. LINDSAY. The Federal Trade Commission was the only agency that wanted to make changes of a very substantial nature to this bill. This amendment makes clear in the law the position which the trademark office has had for about 10 years. It is a clarifying amendment stating in statutory text the trademark office practice regarding service marks. If the FTC wants to change the law in this area—and it will be a substantial change—then it should be done by separate legislation and not by this bill which is primarily a housekeeping bill.

Mr. GROSS. I appreciate the gentleman's explanation, and, Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (1) of subsection (a) of section 1 of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes," approved July 5, 1946 (60 Stat. 427), as amended, is amended by striking the words "as might be calculated to deceive" and inserting in lieu thereof "as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive"; and by striking the words "or services" from the proviso thereof.

SEC. 2. Subsection (d) of section 2 is amended by striking the language beginning with the word "confusion", first appearance, and ending with the word "herewith" at the end of said subsection and inserting in lieu thereof the following: "confusion, or to cause mistake, or to deceive: *Provided*, That when the Commissioner determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks

under conditions and limitations to the mode or place of use of the marks or the goods in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (1) the earliest of the filing dates of the applications pending under this Act; or (11) the date of a registration issued under this Act; or (111) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (1v) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods in connection with which such mark is registered to the respective persons."

SEC. 3. Section 6 is amended by striking the entire section and inserting in lieu thereof the following:

"SEC. 6. (a) The Commissioner may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

"(b) No disclaimer heretofore or hereafter made, or made under paragraph (d) of section 7 of this Act, shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services."

SEC. 4. The first sentence of subsection (a) of section 7 is amended by striking therefrom the word "either"; by striking the words "name printed" and inserting in lieu thereof the words "signature placed"; by striking the words "and attested by an assistant commissioner or by one of the law examiners duly designated by the Commissioner," and by striking the words "and a record thereof, together with printed copies of the drawing and statement of the applicant, shall be kept in books for that purpose" and inserting in lieu thereof the words "and a record thereof shall be kept in the Patent Office." The second sentence of subsection (a) of section 7 is amended by striking therefrom the word "certificate" and inserting the word "registration" in lieu thereof; by striking therefrom the words "the drawing of"; and by striking the words "the grant of".

Subsection (d) of section 7 is amended by striking the entire subsection and inserting in lieu thereof the following: "Upon application of the registrant the Commissioner may permit any registration to be surrendered for cancellation, and upon cancellation appropriate entry shall be made in the records of the Patent Office. Upon application of the registrant and payment of the prescribed fee, the Commissioner for good cause may permit any registration to be amended or to be disclaimed in part: *Provided*, That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the Patent Office and upon the certificate of registration or, if said certificate is lost or destroyed, upon a certified copy thereof."

Subsection (e) of section 7 is amended by striking the words "certificates of"; by adding an "s" to the word "registration"; and striking the words "a chief of division" and inserting in lieu thereof "an employee of the Office".

Subsection (f) of section 7 is amended by striking from the first sentence the words "signed by the Commissioner and sealed with the seal of the Patent Office"; by striking the word "certificate", second occurrence; and by striking the word "certificate", third occurrence, and inserting the word "registration" in lieu thereof.

SEC. 5. Section 9 is amended by striking the entire section and inserting in lieu thereof the following:

"SEC. 9. (a) Each registration may be renewed for periods of twenty years from the end of the expiring period upon payment of the prescribed fee and the filing of a verified application therefor, setting forth those goods or services recited in the registration on or in connection with which the mark is still in use in commerce and attaching thereto a specimen or facsimile showing current use of the mark, or showing that any nonuse is due to special circumstances which excuse such nonuse and it is not due to any intention to abandon the mark. Such application may be made at any time within six months before the expiration of the period for which the registration was issued or renewed, or it may be made within three months after such expiration on payment of the additional fee herein provided.

"(b) If the Commissioner refuses to renew the registration, he shall notify the registrant of his refusal and the reasons therefor.

"(c) An applicant for renewal not domiciled in the United States shall be subject to and comply with the provisions of section 1(d) hereof."

SEC. 6. Section 10 is amended by changing the colon following the word "conducted" to a period and striking the words "Provided, That any assigned registration may be canceled at any time if the registered mark is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used"; and striking the sentence "The Commissioner shall keep a separate record of such assignments submitted to him for recording," and inserting in lieu thereof "A separate record of assignments submitted for recording hereunder shall be maintained in the Patent Office."

SEC. 7. Subsection (a) of section 12 is amended by changing the period at the end thereof to a colon and inserting after the colon the following: "Provided, That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference as provided for in section 16 of this Act, the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings."

Subsection (c) of section 12 is amended by striking therefrom the first word of the last sentence and inserting in lieu thereof the words "Marks published under this".

SEC. 8. Section 13 is amended by striking the words "notice of" each occurrence, and by adding at the end thereof the following sentence: "An opposition may be amended under such conditions as may be prescribed by the Commissioner."

SEC. 9. Section 14 is amended by striking said section in its entirety and inserting in lieu thereof the following:

"SEC. 14. A verified petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed by any person who believes that he is or will be damaged by the registration of a mark on the principal register established by this Act, or under the

Act of March 3, 1881, or the Act of February 20, 1905—

"(a) within five years from the date of the registration of the mark under this Act; or

"(b) within five years from the date of publication under section 12(c) hereof of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905; or

"(c) at any time if the registered mark becomes the common descriptive name of an article or substance, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 4 or of subsections (a), (b), or (c) of section 2 of this Act for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used; or

"(d) at any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 12 of this Act; or

"(e) at any time in the case of a certification mark on the ground that the registrant (1) does not control, or is not able legitimately to exercise control over, the use of such mark, or (2) engages in the production or marketing of any goods or services to which the certification mark is applied, or (3) permits the use of the certification mark for purposes other than to certify, or (4) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies:

"Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in subsections (c) and (e) of this section any mark registered on the principal register established by this Act, and the prescribed fee shall not be required."

SEC. 10. Section 15 is amended by striking "(c) and (d)" in the first paragraph and inserting in lieu thereof the following: "(c) and (e)".

Section 15 is amended by striking "or trade name" from paragraph numbered (4).

SEC. 11. Section 16 is amended by striking therefrom the word "purchasers".

SEC. 12. Section 21 is amended by striking the entire section, and inserting in lieu thereof the following:

"SEC. 21. (a) (1) An applicant for registration of a mark, party to an interference proceeding, party to an opposition proceeding, party to an application to register as a lawful concurrent user, party to a cancellation proceeding, a registrant who has filed an affidavit as provided in section 8, or an applicant for renewal, who is dissatisfied with the decision of the Commissioner or Trademark Trial and Appeal Board, may appeal to the United States Court of Customs and Patent Appeals thereby waiving his right to proceed under section 21(b) hereof: *Provided*, That such appeal shall be dismissed if any adverse party to the proceeding, other than the Commissioner, shall, within twenty days after the appellant has filed notice of appeal according to section 21(a)(2) hereof, files notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 21(b) hereof. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under said section 21(b), in default of which the decision appealed from shall govern the further proceedings in the case.

"(2) When an appeal is taken to the United States Court of Customs and Patent Appeals, the appellant shall give notice thereof to the Commissioner, and shall file in the Patent Office his reasons of appeal,

specifically set forth in writing, within such time after the date of the decision appealed from, not less than sixty days, as the Commissioner appoints.

"(3) The court shall, before hearing such appeal, give notice of the time and place of the hearing to the Commissioner and the parties thereto. The Commissioner shall transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant and any additional papers and evidence specified by the appellee, and in an ex parte case the Commissioner shall furnish the court with the grounds of the decision of the Patent Office, in writing, touching all the points involved by the reasons of appeal.

"(4) The court shall hear and determine such appeal on the evidence produced before the Patent Office, and the decision shall be confined to the points set forth in the reasons of appeal. Upon its determination, the court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent Office and govern the further proceedings in the case.

"(b) (1) Whenever a person authorized by section 21(a) hereof to appeal to the United States Court of Customs and Patent Appeals is dissatisfied with the decision of the Commissioner or Trademark Trial and Appeal Board, said person may, unless appeal has been taken to said Court of Customs and Patent Appeals, have remedy by a civil action if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints or as provided in section 21(a). The court may adjudge that an applicant is entitled to a registration upon the application involved, that a registration involved should be canceled, or such other matter as the issues in the proceeding require, as the facts in the case may appear. Such adjudication shall authorize the Commissioner to take any necessary action, upon compliance with the requirements of law.

"(2) The Commissioner shall not be made a party to an inter partes proceeding under this subsection, but he shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall have the right to intervene in the action.

"(3) In all cases where there is no adverse party, a copy of the complaint shall be served on the Commissioner; and all the expenses of the proceedings shall be paid by the party bringing them, whether the final decision is in his favor or not. In suits brought hereunder, the record in the Patent Office shall be admitted on motion of any party, upon such terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of any party to take further testimony. The testimony and exhibits of the record in the Patent Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

"(4) Where there is an adverse party, such suit may be instituted against the party in interest as shown by the records of the Patent Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs."

SEC. 13. Section 23 is amended by striking from the last paragraph thereof the words

"has begun the lawful use of his mark in foreign commerce and that he".

SEC. 14. Section 24 is amended by inserting in the second sentence thereof, following the word "time", the following: ", upon payment of the prescribed fee and the filing of a verified petition stating the ground therefor,"; and by inserting in the third sentence following the word "Board" the word "which".

SEC. 15. Section 29 is amended by deleting the following: "under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register established by this Act, shall" and inserting in lieu thereof the following: "In the Patent Office, may"; and by deleting "so to mark goods bearing the registered mark, or by a registrant under the Act of March 19, 1920, or by the registrant of a mark on the supplemental register provided by this Act" and inserting in lieu thereof "to give such notice of registration".

SEC. 16. Section 30 is amended by striking the word "shall" in the first sentence and inserting in lieu thereof the word "may"; and by striking therefrom all of said section except the first sentence thereof and inserting in lieu thereof the following: "The applicant may file an application to register a mark for any or all of the goods and services upon or in connection with which he is actually using the mark: *Provided*, That when such goods or services fall within a plurality of classes, a fee equaling the sum of the fees for filing an application in each class shall be paid, and the Commissioner may issue a single certificate of registration for such mark."

SEC. 17. Subsection (1) of section 32 is amended by striking the entire subsection and inserting in lieu thereof the following:

"Any person who shall, without the consent of the registrant—

"(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

"(b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.

shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) hereof, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive."

Paragraph (b) of subsection (2) of section 32 is amended by striking the word "published" and inserting in lieu thereof the word "publisher".

SEC. 18. Subsection (a) of section 33 is amended by striking therefrom the words "certificate of" in the first line, and changing "certificate", second appearance, to "registration".

Subsection (b) of section 33 is amended by striking the word "certificate", first appearance, and inserting the word "registration" in lieu thereof and by striking therefrom the word "certificate", second appearance, and inserting in lieu thereof "affidavit filed under the provisions of said section 15".

Paragraph (3) of subsection (b) of section 33 is amended by striking therefrom the words "has been assigned and"; and by striking therefrom the word "assignee" and

inserting in lieu thereof the words "registrant or a person in privity with the registrant".

Paragraph (5) of subsection (b) of section 33 is amended by striking therefrom the word "the" following the words "date prior to" and inserting in lieu thereof the words "registration of the mark under this Act or"; by striking therefrom "(a) or" following the word "subsection"; and by changing the period to "; or".

Paragraph (6) of subsection (b) of section 33 is amended by inserting the words "registration under this Act or" after the word "the", second appearance; by striking therefrom "(a) or" following the word "subsection", first appearance; by striking from the proviso the words "only where the said mark has been published pursuant to subsection (c) of section 12 and shall apply"; by striking the words "the date of" following the words "prior to" in said proviso and inserting in lieu thereof "such registration or such"; by striking therefrom the words "under subsection (a) or (c) of section 12 of this Act"; and by changing the period to "; or".

SEC. 19. Section 35 is amended by striking "31(1)(b)" and inserting in lieu thereof "32".

SEC. 20. Subsection (b) of section 44 is amended by striking said subsection in its entirety and inserting in lieu thereof the following:

"(b) Any person whose country of origin is a party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which the United States is also a party, or extends reciprocal rights to nationals of the United States by law, shall be entitled to the benefits of this section under the conditions expressed herein to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of a mark is otherwise entitled by this Act."

Subsection (e) of section 44 is amended by inserting after the word "a" in the second sentence the words "certification or a"; and by striking from said second sentence the words "application for or".

SEC. 21. Section 45 is amended as follows: The sixth paragraph of said section, relating to the definition of "applicant, registrant", is amended by changing "and", second appearance, to ", predecessors,".

The ninth paragraph of said section, relating to the meaning of terms "trade name" and "commercial name", is amended by inserting a comma between the words "commercial" and "agricultural".

The eleventh paragraph of said section, being the definition of "service mark", is amended by striking the definition in its entirety and inserting in lieu thereof:

"The term 'service mark' means a mark used in the sale or advertising of services to identify the services of one person and distinguished them from the services of others. Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor."

The fifteenth paragraph of said section, relating to use in commerce, is amended by changing the period at the end of said paragraph to a comma and adding the words "or the services are rendered in more than one State or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith."

The seventeenth paragraph of said section, relating to the meaning of the term "colorful imitation", is amended by changing "terms" to "term" and deleting the word "purchasers" at the end thereof.

The final paragraph of said section is amended by striking therefrom the word

"commence" and inserting in lieu thereof the word "commerce".

With the following committee amendments:

1. Page 2, line 18, insert after "pending" the words "or of any registration issued".

Page 2, lines 18 and 19, strike out "or (ii) the date of a registration issued under this Act;".

Page 2, line 20, change "(iii)" to "(ii)".

Page 2, line 23, change "(iv)" to "(iii)".

2. Page 3, line 14, strike out "heretofore or hereafter made, or" and substitute ", including those".

Page 4, lines 14 and 15, change "cancellation" to "cancelation".

Page 5, line 25, change "provided" to "prescribed".

Page 5, line 17, change "attaching" to "having attached".

Page 13, line 16, change "In" to "in".

Page 18, line 6, change "distinguished" to "distinguish".

COMPACT BETWEEN LOUISIANA AND TEXAS

The Clerk called the bill (H.R. 7855) granting the consent of Congress to an amendment to a compact ratified by the States of Louisiana and Texas and relating to the waters of the Sabine River.

The SPEAKER pro tempore. Is there objection to the present consideration of the bill?

Mr. GROSS. Reserving the right to object, Mr. Speaker, I should like to be assured that this deals only with Texas membership on this commission and has nothing whatever to do with offshore oil lands. No change in the offshore oil lands boundaries is made by this bill?

Mr. ASPINALL. As far as I know, it has nothing to do with offshore oil lands, because that was never even mentioned in the hearings by the committee when we were considering the bill. This authorization is to lengthen the time thereby permitting continuity of membership.

Mr. GROSS. I withdraw my reservation of objection, Mr. Speaker.

The SPEAKER pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Clerk read the bill as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, the consent of the Congress is hereby given to an amendment to the interstate compact relating to the waters of the Sabine River and to its tributaries which was ratified by the Legislature of the State of Texas and ratified by the Legislature of the State of Louisiana, which amendment reads as follows:

"ARTICLE VII—

"(C) The Texas members shall be appointed by the Governor for a term of six years; provided, however, that one of the original Texas members shall be appointed for a term to establish a half-term interval between the expiration dates of the terms of such members, and thereafter one such member shall be appointed each three years for the regular term. One of the Louisiana members shall be ex-officio the Director of the Louisiana Department of Public Works; the other Louisiana member shall be a resident of the Sabine Watershed and shall be appointed by the Governor of Louisiana for a term of four years; provided that the first member so appointed shall

Committee Meetings

(Committees not listed did not meet)

APPROPRIATIONS—SUPPLEMENTAL

Committee on Appropriations: Committee began hearings on H.R. 9169, supplemental appropriations for fiscal 1962, receiving testimony from Senator Long of Louisiana on funds for Small Business Administration disaster loans; Senator Proxmire, on funds for the Forest Products Laboratory; and numerous Government witnesses on funds for the following items: participation in Century 21 Exposition to be held in Seattle; studies for the New York World's Fair; Bureau of the Census; maritime activities; National Bureau of Standards; Weather Bureau; Area Redevelopment Administration; Council of Economic Advisers; Federal Maritime Commission; Small Business Administration; Farmers Home Administration; and emergency grain storage.

Hearings continue tomorrow.

COMMITTEE BUSINESS

Committee on Public Works: Committee, in executive session, ordered favorably reported the following bills: S. 520, authorizing modification of the existing project for the Kaskaskia River, Ill., for navigation purposes (amended); S. 455, providing for public hearings on air pollution problems of more than local significance, and extension of authorizations under the Federal air pollution control law; H.R. 7854, providing for a modification of the Duluth-Superior Harbor project, Minnesota and Wisconsin; H.R. 7888, extending the time within which the land in certain reservoir projects in Texas may be reconveyed to the former owners thereof; and H.R. 8558, relating to organization of the Bureau of Public Roads (amended).

Committee also approved the nomination of Harold T. Council, to be a member of the Mississippi River Commission.

House of Representatives

Chamber Action

Bills Introduced: 10 public bills, H.R. 9273-9282; 7 private bills, H.R. 9283-9289; and 2 resolutions, H.J. Res. 579 and H. Res. 469, were introduced.

Pages 18928-18929

Bills Reported: Reports were filed as follows:

Conference report on H.R. 8302, making appropriations for military construction for the Department of Defense (H. Rept. 1201);

S. 1750, to strengthen the Federal Firearms Act (H. Rept. 1202);

S. 158, a private bill (H. Rept. 1203);

S. 558, to exempt the District of Columbia from paying fees in any courts of the District of Columbia (H. Rept. 1204);

S. 564, to apportion the expense of maintaining Woodrow Wilson Memorial Bridge over the Potomac River (H. Rept. 1205);

S. 1291, to increase from \$1 to \$2 the fee for D.C. learners' permits (H. Rept. 1206);

S. 2397, authorizing the National Capital Transportation Agency to carry out part I of the transit development program (H. Rept. 1207);

H.R. 5393, to amend the Bankruptcy Act, as amended, amended (H. Rept. 1208); and

Conference report on H.R. 4998, to assist in expanding and improving community facilities and services for the health care of aged and other persons (H. Rept. 1209).

Page 18928

Alaskan Land Withdrawal: H.R. 2279, to provide for the withdrawal from the public lands in the Granite

Creek area, Alaska, for use by the Department of the Army at Fort Greely, Alaska, was cleared for Presidential consideration by House agreement to Senate amendments thereto.

Page 18817

Peace Corps: Disagreed to Senate amendments to H.R. 7500, to provide for a Peace Corps to help the peoples of interested countries and areas in meeting their needs for skilled manpower, agreed to a conference requested by the Senate, and appointed as conferees Representatives Morgan, Zablocki, Kelly of New York, Merrow, and Judd.

Pages 18817-18818

Consent Calendar: Passed the following bills on the call of the Consent Calendar:

Cleared for the President:

Communications—sabotage: S. 1990, relating to protection of certain communications facilities.

Public lands: S. 2272, disclaiming interest in certain rights in certain lands in State of Nevada.

Sent to the Senate without amendments:

Foreign commerce: H.R. 7791, providing for the collection and publication of foreign commerce and trade statistics.

Sabine River compact: H.R. 7855, granting congressional consent to an amendment to a compact ratified by the States of Louisiana and Texas relating to the waters of the Sabine River.

Federal pay election: H.R. 8565, relating to election of certain employees to receive compensation under section 401 of the Federal Employees Pay Act of 1945.

Bond waiver: H.R. 8741, to authorize any Federal agency to waive performance and payment bonds.

Bridge commissions' audit: H.R. 8921, providing for annual audit of bridge commissions and authorities created by act of Congress and for the filling of vacancies in the membership thereof.

Air crash claims: H.R. 8958, regarding settlement of claims arising out of the crash of a U.S. Air Force aircraft at Midwest City, Okla., on August 25, 1961.

Rice: H.R. 9013, to provide for the transfer of rice acreage history where producer withdraws from the production of rice.

Educational loans: H.R. 9053, to amend title II of National Defense Education Act of 1958 with respect to the periods for which loans under the title are made.

Sent to the Senate amended:

Inter-American children: S.J. Res. 66 (in lieu of H.R. 8895), relating to the Inter-American Children's Institute.

Farm mortgages: S. 1040, to abolish the Federal Farm Mortgage Corporation.

Durum wheat: S. 1107, to provide a 2-year extension of the existing provision for a minimum wheat acreage allotment in Tululake area of California.

Flood control: H.R. 3801, relating to joint investigation by the Secretaries of the Army and Agriculture of watershed areas for flood prevention or the conservation, development, utilization, and disposal of water, and for flood control and allied purposes, and to prepare and submit reports to the Congress.

Trademark registration: H.R. 4333, relating to registration and protection of trademarks.

Mail transportation: H.R. 6695, to amend U.S. Code with respect to the transportation of mail by highway post office service.

Puerto Rico—poultry inspection: H.R. 7866, to amend the Poultry Products Inspection Act to extend the application thereof to the Commonwealth of Puerto Rico.

Wheat: H.R. 8842, to amend Agricultural Enabling Amendment Act of 1961 to correct an inequity in the 1962 wheat program.

Oregon land exchange: H.R. 8924, amending existing law relating to an exchange of lands between the Navy and the State of Oregon.

Eligible bills not considered:

Passed over without prejudice: S. 1927, H.R. 2049, 4934, 5628, 6759, 8355, and 8914.

Objected to and stricken from calendar: H. Con. Res. 208.

Objected to: H.R. 947.

Pages 18818-18830

D.C. Clergymen: H.R. 5486, to prohibit the examination in D.C. courts of any minister of religion in connection with any communication made to him in his professional capacity, without the consent of the party to such communication, was cleared for the President by House concurrence in Senate amendments thereto.

Page 18830

D.C. Taxes: Disagreed to Senate amendments to H.R. 258, increasing the D.C. sales tax from 2 cents to 3 cents and to transfer certain parking fees and other moneys to the highway fund, requested a conference with the Senate, and appointed as conferees Representatives McMillan, Burke of Kentucky, and Broyhill.

Suspension Passages: The following bills were called up, considered, and passed under suspension of the rules:

Education—federally impacted areas and NDEA: S. 2393, to extend for 2 years the law relating to assistance for schools in federally impacted areas, and for 2 years provisions of National Defense Education Act (passed and cleared for President by a record vote of 342 yeas to 18 nays).

Pages 18831-18834

Postal pay: S. 1459, to adjust longevity step increases for postal employees (passed and cleared for President by a record vote of 361 yeas to 4 nays).

Pages 18834-18843

Foreign agents registration: H.R. 5751, to amend the Subversive Activities Control Act of 1950 so as to require the registration of certain additional persons disseminating political propaganda within the United States as agents of a foreign principal (amended and passed by a record vote of 369 yeas to 2 nays).

Pages 18843-18850

Sports telecasts: H.R. 9096, to amend the antitrust laws to authorize league of professional football, baseball, basketball, and hockey teams to enter into certain television contracts (amended and passed by a voice vote).

Pages 18851-18855

Civil service—supergrades: H.R. 7377, to increase the limitation on the number of positions which may be placed in the top grades of the Classification Act of 1949, as amended, and on the number of research and development positions of scientists and engineers for which special rates of pay are authorized and to fix the compensation of hearing examiners (amended and passed by a record vote of 305 yeas to 53 nays).

Pages 18861-18870

GPO annex: H.R. 3019, providing for the construction of a fireproof annex building for use of the Government Printing Office (passed by a voice vote).

Page 18871

Supplemental air carriers: H.R. 7318, to amend the Federal Aviation Act of 1958, as amended, to provide for a class of supplemental air carriers (passed by a voice vote). This passage was subsequently vacated and S. 1969, a similar bill, was passed in lieu after being amended to contain the House-passed language.

Pages 18872-18903

Suspensions: The consideration of H.R. 5628, S. 302, and H.R. 4172, under suspension of the rules, was made in order on Wednesday (these bills were scheduled for today but were not reached).

Page 18901

87TH CONGRESS
1ST SESSION

H. R. 4333

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19 (legislative day, SEPTEMBER 16), 1961

Read twice and referred to the Committee on the Judiciary

AN ACT

To amend the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946, as amended.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That paragraph (1) of subsection (a) of section 1 of the
4 Act entitled "An Act to provide for the registration and
5 protection of trademarks used in commerce, to carry out the
6 provisions of certain international conventions, and for other
7 purposes", approved July 5, 1946 (60 Stat. 427), as
8 amended, is amended by striking the words "as might be
9 calculated to deceive" and inserting in lieu thereof "as to

1 be likely, when applied to the goods of such other person, to
2 cause confusion, or to cause mistake, or to deceive"; and
3 by striking the words "or services" from the proviso thereof.

4 SEC. 2. Subsection (d) of section 2 is amended by
5 striking the language beginning with the word "confusion",
6 first appearance, and ending with the word "herewith" at
7 the end of said subsection and inserting in lieu thereof the
8 following: "confusion, or to cause mistake, or to deceive:
9 *Provided*, That when the Commissioner determines that
10 confusion, mistake, or deception is not likely to result from
11 the continued use by more than one person of the same
12 or similar marks under conditions and limitations as to the
13 mode or place of use of the marks or the goods in connec-
14 tion with which such marks are used, concurrent registrations
15 may be issued to such persons when they have become
16 entitled to use such marks as a result of their concurrent
17 lawful use in commerce prior to (i) the earliest of the
18 filing dates of the applications pending or of any registra-
19 tion issued under this Act; or (ii) July 5, 1947, in the case
20 of registrations previously issued under the Act of March 3,
21 1881; or February 20, 1905, and continuing in full force and
22 effect on that date; or (iii) July 5, 1947, in the case of
23 applications filed under the Act of February 20, 1905, and
24 registered after July 5, 1947. Concurrent registrations may

1 also be issued by the Commissioner when a court of compe-
2 tent jurisdiction has finally determined that more than one
3 person is entitled to use the same or similar marks in com-
4 merce. In issuing concurrent registrations, the Commissioner
5 shall prescribe conditions and limitations as to the mode or
6 place of use of the mark or the goods in connection with
7 which such mark is registered to the respective persons.”

8 SEC. 3. Section 6 is amended by striking the entire sec-
9 tion and inserting in lieu thereof the following:

10 “SEC. 6. (a) The Commissioner may require the appli-
11 cant to disclaim an unregistrable component of a mark other-
12 wise registrable. An applicant may voluntarily disclaim a
13 component of a mark sought to be registered.

14 “(b) No disclaimer, including those made under
15 paragraph (d) of section 7 of this Act, shall prejudice or
16 affect the applicant’s or registrant’s rights then existing or
17 thereafter arising in the disclaimed matter, or his right of
18 registration on another application if the disclaimed
19 matter be or shall have become distinctive of his goods or
20 services.”

21 SEC. 4. The first sentence of subsection (a) of section
22 7 is amended by striking therefrom the word “either”; by
23 striking the words “name printed” and inserting in lieu
24 thereof the words “signature placed”; by striking the words

1 “and attested by an assistant commissioner or by one of the
2 law examiners duly designated by the Commissioner,” and
3 by striking the words “and a record thereof, together with
4 printed copies of the drawing and statement of the appli-
5 cant, shall be kept in books for that purpose” and inserting
6 in lieu thereof the words “, and a record thereof shall be
7 kept in the Patent Office.” The second sentence of subsec-
8 tion (a) of section 7 is amended by striking therefrom the
9 word “certificate” and inserting the word “registration” in
10 lieu thereof; by striking therefrom the words “the drawing
11 of”; and by striking the words “the grant of”.

12 Subsection (d) of section 7 is amended by striking the
13 entire subsection and inserting in lieu thereof the following:
14 “Upon application of the registrant the Commissioner may
15 permit any registration to be surrendered for cancelation,
16 and upon cancelation appropriate entry shall be made in
17 the records of the Patent Office. Upon application of the
18 registrant and payment of the prescribed fee, the Com-
19 missioner for good cause may permit any registration to
20 be amended or to be disclaimed in part: *Provided*, That
21 the amendment or disclaimer does not alter materially the
22 character of the mark. Appropriate entry shall be made
23 in the records of the Patent Office and upon the certificate

1 of registration or, if said certificate is lost or destroyed,
2 upon a certified copy thereof.”

3 Subsection (e) of section 7 is amended by striking the
4 words “certificates of”; by adding an “s” to the word “regis-
5 tration”; and striking the words “a chief of division” and
6 inserting in lieu thereof “an employee of the Office”.

7 Subsection (f) of section 7 is amended by striking from
8 the first sentence the words “, signed by the Commissioner
9 and sealed with the seal of the Patent Office”; by striking
10 the word “certificate”, second occurrence; and by striking
11 the word “certificate”, third occurrence, and inserting the
12 word “registration” in lieu thereof.

13 SEC. 5. Section 9 is amended by striking the entire
14 section and inserting in lieu thereof the following:

15 “SEC. 9. (a) Each registration may be renewed for
16 periods of twenty years from the end of the expiring period
17 upon payment of the prescribed fee and the filing of a veri-
18 fied application therefor, setting forth those goods or services
19 recited in the registration on or in connection with which
20 the mark is still in use in commerce and having attached
21 thereto a specimen or facsimile showing current use of
22 the mark, or showing that any nonuse is due to special cir-
23 cumstances which excuse such nonuse and it is not due to any

1 intention to abandon the mark. Such application may be
2 made at any time within six months before the expiration of
3 the period for which the registration was issued or renewed,
4 or it may be made within three months after such expiration
5 on payment of the additional fee herein prescribed.

6 “(b) If the Commissioner refuses to renew the regis-
7 tration, he shall notify the registrant of his refusal and the
8 reasons therefor.

9 “(c) An applicant for renewal not domiciled in the
10 United States shall be subject to and comply with the pro-
11 visions of section 1 (d) hereof.”

12 SEC. 6. Section 10 is amended by changing the colon
13 following the word “conducted” to a period and striking the
14 words “*Provided*, That any assigned registration may be
15 canceled at any time if the registered mark is being used by,
16 or with the permission of, the assignee so as to misrepresent
17 the source of the goods or services in connection with which
18 the mark is used”; and striking the sentence “The Commis-
19 sioner shall keep a separate record of such assignments sub-
20 mitted to him for recording.” and inserting in lieu thereof
21 “A separate record of assignments submitted for recording
22 hereunder shall be maintained in the Patent Office.”

23 SEC. 7. Subsection (a) of section 12 is amended by
24 changing the period at the end thereof to a colon and insert-
25 ing after the colon the following: “*Provided*, That in the case

1 of an applicant claiming concurrent use, or in the case of an
 2 application to be placed in an interference as provided for in
 3 section 16 of this Act, the mark, if otherwise registrable,
 4 may be published subject to the determination of the rights
 5 of the parties to such proceedings.”

6 Subsection (c) of section 12 is amended by striking
 7 therefrom the first word of the last sentence and inserting in
 8 lieu thereof the words “Marks published under this”.

9 SEC. 8. Section 13 is amended by striking the words
 10 “notice of” each occurrence, and by adding at the end thereof
 11 the following sentence: “An opposition may be amended
 12 under such conditions as may be prescribed by the Com-
 13 missioner.”

14 SEC. 9. Section 14 is amended by striking said section
 15 in its entirety and inserting in lieu thereof the following:

16 “SEC. 14. A verified petition to cancel a registration of
 17 a mark, stating the grounds relied upon, may, upon payment
 18 of the prescribed fee, be filed by any person who believes
 19 that he is or will be damaged by the registration of a mark
 20 on the principal register established by this Act, or under the
 21 Act of March 3, 1881, or the Act of February 20, 1905—

22 “(a) within five years from the date of the regis-
 23 tration of the mark under this Act; or

24 “(b) within five years from the date of publica-
 25 tion under section 12 (c) hereof of a mark registered

1 under the Act of March 3, 1881, or the Act of February
2 20, 1905; or

3 “(c) at any time if the registered mark becomes
4 the common descriptive name of an article or substance,
5 or has been abandoned, or its registration was obtained
6 fraudulently or contrary to the provisions of section 4
7 or of subsections (a), (b), or (c) of section 2 of this
8 Act for a registration hereunder, or contrary to similar
9 prohibitory provisions of said prior Acts for a registra-
10 tion thereunder, or if the registered mark is being used
11 by, or with the permission of, the registrant so as to
12 misrepresent the source of the goods or services in con-
13 nection with which the mark is used; or

14 “(d) at any time if the mark is registered under
15 the Act of March 3, 1881, or the Act of February 20,
16 1905, and has not been published under the provisions
17 of subsection (c) of section 12 of this Act; or

18 “(e) at any time in the case of a certification mark
19 on the ground that the registrant (1) does not control,
20 or is not able legitimately to exercise control over, the
21 use of such mark, or (2) engages in the production or
22 marketing of any goods or services to which the certi-
23 fication mark is applied, or (3) permits the use of the
24 certification mark for purposes other than to certify, or
25 (4) discriminately refuses to certify or to continue to

1 certify the goods or services of any person who main-
2 tains the standards or conditions which such mark
3 certifies:

4 “*Provided*, That the Federal Trade Commission may apply
5 to cancel on the grounds specified in subsections (c) and (e)
6 of this section any mark registered on the principal register
7 established by this Act, and the prescribed fee shall not be
8 required.”

9 SEC. 10. Section 15 is amended by striking “(c) and
10 (d)” in the first paragraph and inserting in lieu thereof the
11 following: “(c) and (e)”.

12 Section 15 is amended by striking “or trade name” from
13 paragraph numbered (4).

14 SEC. 11. Section 16 is amended by striking therefrom
15 the word “purchasers”.

16 SEC. 12. Section 21 is amended by striking the entire
17 section, and inserting in lieu thereof the following:

18 “SEC. 21. (a) (1) An applicant for registration of a
19 mark, party to an interference proceeding, party to an op-
20 position proceeding, party to an application to register as a
21 lawful concurrent user, party to a cancellation proceeding,
22 a registrant who has filed an affidavit as provided in section
23 8, or an applicant for renewal, who is dissatisfied with the
24 decision of the Commissioner or Trademark Trial and Ap-

1 peal Board, may appeal to the United States Court of Cus-
2 toms and Patent Appeals thereby waiving his right to
3 proceed under section 21 (b) hereof: *Provided*, That such
4 appeal shall be dismissed if any adverse party to the pro-
5 ceeding, other than the Commissioner, shall, within twenty
6 days after the appellant has filed notice of appeal according
7 to section 21 (a) (2) hereof, files notice with the Commis-
8 sioner that he elects to have all further proceedings con-
9 ducted as provided in section 21 (b) hereof. Thereupon
10 the appellant shall have thirty days thereafter within which
11 to file a civil action under said section 21 (b), in default of
12 which the decision appealed from shall govern the further
13 proceedings in the case.

14 “(2) When an appeal is taken to the United States
15 Court of Customs and Patent Appeals, the appellant shall
16 give notice thereof to the Commissioner, and shall file in
17 the Patent Office his reasons of appeal, specifically set forth
18 in writing, within such time after the date of the decision
19 appealed from, not less than sixty days, as the Commissioner
20 appoints.

21 “(3) The court shall, before hearing such appeal, give
22 notice of the time and place of the hearing to the Commis-
23 sioner and the parties thereto. The Commissioner shall
24 transmit to the court certified copies of all the necessary
25 original papers and evidence in the case specified by the

1 appellant and any additional papers and evidence specified
2 by the appellee, and in an ex parte case the Commissioner
3 shall furnish the court with the grounds of the decision of
4 the Patent Office, in writing, touching all the points involved
5 by the reasons of appeal.

6 “(4) The court shall hear and determine such appeal
7 on the evidence produced before the Patent Office, and the
8 decision shall be confined to the points set forth in the
9 reasons of appeal. Upon its determination, the court shall
10 return to the Commissioner a certificate of its proceedings
11 and decision, which shall be entered of record in the Patent
12 Office and govern the further proceedings in the case.

13 “(b) (1) Whenever a person authorized by section 21
14 (a) hereof to appeal to the United States Court of Customs
15 and Patent Appeals is dissatisfied with the decision of the
16 Commissioner or Trademark Trial and Appeal Board, said
17 person may, unless appeal has been taken to said Court of
18 Customs and Patent Appeals, have remedy by a civil action
19 if commenced within such time after such decision, not less
20 than sixty days, as the Commissioner appoints or as provided
21 in section 21 (a). The court may adjudge that an applicant
22 is entitled to a registration upon the application involved,
23 that a registration involved should be canceled, or such other
24 matter as the issues in the proceeding require, as the facts in
25 the case may appear. Such adjudication shall authorize the

1 Commissioner to take any necessary action, upon compliance
2 with the requirements of law.

3 “(2) The Commissioner shall not be made a party to an
4 inter partes proceeding under this subsection, but he shall
5 be notified of the filing of the complaint by the clerk of
6 the court in which it is filed and shall have the right to
7 intervene in the action.

8 “(3) In all cases where there is no adverse party, a
9 copy of the complaint shall be served on the Commissioner;
10 and all the expenses of the proceedings shall be paid by
11 the party bringing them, whether the final decision is in
12 his favor or not. In suits brought hereunder, the record in
13 the Patent Office shall be admitted on motion of any party,
14 upon such terms and conditions as to costs, expenses, and
15 the further cross-examination of the witnesses as the court
16 imposes, without prejudice to the right of any party to take
17 further testimony. The testimony and exhibits of the record
18 in the Patent Office, when admitted, shall have the same
19 effect as if originally taken and produced in the suit.

20 “(4) Where there is an adverse party, such suit may
21 be instituted against the party in interest as shown by the
22 records of the Patent Office at the time of the decision com-
23 plained of, but any party in interest may become a party
24 to the action. If there be adverse parties residing in a
25 plurality of districts not embraced within the same State.

1 or an adverse party residing in a foreign country, the United
2 States District Court for the District of Columbia shall have
3 jurisdiction and may issue summons against the adverse
4 parties directed to the marshal of any district in which any
5 adverse party resides. Summons against adverse parties
6 residing in foreign countries may be served by publication
7 or otherwise as the court directs.”

8 SEC. 13. Section 23 is amended by striking from the
9 last paragraph thereof the words “has begun the lawful use
10 of his mark in foreign commerce and that he”.

11 SEC. 14. Section 24 is amended by inserting in the
12 second sentence thereof, following the word “time”, the
13 following: “, upon payment of the prescribed fee and the
14 filing of a verified petition stating the ground therefor,”; and
15 by inserting in the third sentence following the word “Board”
16 the word “which”.

17 SEC. 15. Section 29 is amended by deleting the follow-
18 ing: “under the Act of March 3, 1881, or the Act of Feb-
19 ruary 20, 1905, or on the principal register established by
20 this Act, shall” and inserting in lieu thereof the following:
21 “in the Patent Office, may”; and by deleting “so to mark
22 goods bearing the registered mark, or by a registrant under
23 the Act of March 19, 1920, or by the registrant of a mark
24 on the supplemental register provided by this Act” and in-
25 serting in lieu thereof “to give such notice of registration,”.

1 SEC. 16. Section 30 is amended by striking the word
2 “shall” in the first sentence and inserting in lieu thereof the
3 word “may”; and by striking therefrom all of said section
4 except the first sentence thereof and inserting in lieu thereof
5 the following: “The applicant may file an application to
6 register a mark for any or all of the goods and services upon
7 or in connection with which he is actually using the mark:
8 *Provided*, That when such goods or services fall within a
9 plurality of classes, a fee equaling the sum of the fees for
10 filing an application in each class shall be paid, and the Com-
11 missioner may issue a single certificate of registration for
12 such mark.”

13 SEC. 17. Subsection (1) of section 32 is amended by
14 striking the entire subsection and inserting in lieu thereof
15 the following:

16 “Any person who shall, without the consent of the
17 registrant—

18 “(a) use in commerce any reproduction, counter-
19 feit, copy, or colorable imitation of a registered mark in
20 connection with the sale, offering for sale, distribution, or
21 advertising of any goods or services on or in connection
22 with which such use is likely to cause confusion, or to
23 cause mistake, or to deceive; or

24 “(b) reproduce, counterfeit, copy, or colorably imi-

1 tate a registered mark and apply such reproduction,
2 counterfeit, copy, or colorable imitation to labels, signs,
3 prints, packages, wrappers, receptacles or advertise-
4 ments intended to be used in commerce upon or in con-
5 nection with the sale, offering for sale, distribution, or
6 advertising of goods or services on or in connection with
7 which such use is likely to cause confusion, or to cause
8 mistake, or to deceive.

9 shall be liable in a civil action by the registrant for the
10 remedies hereinafter provided. Under subsection (b) hereof,
11 the registrant shall not be entitled to recover profits or dam-
12 ages unless the acts have been committed with knowledge
13 that such imitation is intended to be used to cause confusion,
14 or to cause mistake, or to deceive.”

15 Paragraph (b) of subsection (2) of section 32 is
16 amended by striking the word “published” and inserting in
17 lieu thereof the word “publisher”.

18 SEC. 18. Subsection (a) of section 33 is amended by
19 striking therefrom the words “certificate of” in the first
20 line, and changing “certificate”, second appearance, to regis-
21 tration”.

22 Subsection (b) of section 33 is amended by striking
23 the word “certificate”, first appearance, and inserting the
24 word “registration” in lieu thereof and by striking therefrom

1 the word “certificate”, second appearance, and inserting in
2 lieu thereof “affidavit filed under the provisions of said sec-
3 tion 15”.

4 Paragraph (3) of subsection (b) of section 33 is
5 amended by striking therefrom the words “has been assigned
6 and”; and by striking therefrom the word “assignee” and
7 inserting in lieu thereof the words “registrant or a person
8 in privity with the registrant”.

9 Paragraph (5) of subsection (b) of section 33 is
10 amended by striking therefrom the word “the” following
11 the words “date prior to” and inserting in lieu thereof the
12 words “registration of the mark under this Act or”; by
13 striking therefrom “(a) or” following the word “subsec-
14 tion”; and by changing the period to “; or”.

15 Paragraph (6) of subsection (b) of section 33 is
16 amended by inserting the words “registration under this
17 Act or” after the word “the”, second appearance; by
18 striking therefrom “(a) or” following the word “subsec-
19 tion”, first appearance; by striking from the proviso the
20 words “only where the said mark has been published pur-
21 suant to subsection (c) of section 12 and shall apply”;
22 by striking the words “the date of” following the words
23 “prior to” in said proviso and inserting in lieu thereof “such
24 registration or such”; by striking therefrom the words “under

1 subsection (a) or (c) of section 12 of this Act”; and by
2 changing the period to “; or”.

3 SEC. 19. Section 35 is amended by striking “31 (1)
4 (b) ” and inserting in lieu thereof “32”.

5 SEC. 20. Subsection (b) of section 44 is amended by
6 striking said subsection in its entirety and inserting in lieu
7 thereof the following:

8 “(b) Any person whose country of origin is a party
9 to any convention or treaty relating to trademarks, trade or
10 commercial names, or the repression of unfair competition,
11 to which the United States is also a party, or extends re-
12 ciprocal rights to nationals of the United States by law, shall
13 be entitled to the benefits of this section under the conditions
14 expressed herein to the extent necessary to give effect to any
15 provision of such convention, treaty or reciprocal law, in ad-
16 dition to the rights to which any owner of a mark is other-
17 wise entitled by this Act.”

18 Subsection (e) of section 44 is amended by inserting
19 after the word “a” in the second sentence the words “certifi-
20 cation or a”; and by striking from said second sentence the
21 words “application for or”.

22 SEC. 21. Section 45 is amended as follows: The sixth
23 paragraph of said section, relating to the definition of “ap-

1 plicant, registrant”, is amended by changing “and”, second
2 appearance, to “, predecessors,”.

3 The ninth paragraph of said section, relating to the
4 meaning of the terms “trade name” and “commercial name”,
5 is amended by inserting a comma between the words “com-
6 mercial” and “agricultural”.

7 The eleventh paragraph of said section, being the defini-
8 tion of “service mark”, is amended by striking the definition
9 in its entirety and inserting in lieu thereof:

10 “The term ‘service mark’ means a mark used in the sale
11 or advertising of services to identify the services of one
12 person and distinguish them from the services of others.
13 Titles, character names and other distinctive features of
14 radio or television programs may be registered as service
15 marks notwithstanding that they, or the programs, may
16 advertise the goods of the sponsor.”

17 The fifteenth paragraph of said section, relating to use
18 in commerce, is amended by changing the period at the end
19 of said paragraph to a comma and adding the words “or
20 the services are rendered in more than one State or in this
21 and a foreign country and the person rendering the services
22 is engaged in commerce in connection therewith.”

23 The seventeenth paragraph of said section, relating to
24 the meaning of the term “colorable imitation”, is amended

1 by changing “terms” to “term” and deleting the word “pur-
2 chasers” at the end thereof.

3 The final paragraph of said section is amended by strik-
4 ing therefrom the word “commence” and inserting in lieu
5 thereof the word “commerce”.

Passed the House of Representatives September 18, 1961.

Attest:

RALPH R. ROBERTS,

Clerk.

AN ACT

To amend the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946, as amended.

SEPTEMBER 19 (legislative day, SEPTEMBER 16), 1961
Read twice and referred to the Committee on the
Judiciary

Sept 17, 1962

SENATE

16. FOREIGN TRADE. Began debate on H. R. 11970, the proposed Trade Expansion Act of 1962 (pp. 18445, 18447, 18452-7, 18467-8, 18474-7). Agreed to the committee amendments en bloc and the bill, as amended, will be treated as original text for purposes of further amendment (pp. 18455-7).
17. MINERALS. Passed as reported S. J. Res. 136, to authorize a study to determine the susceptibility of minerals to electrometallurgical processes. pp. 18459-60
- Passed without amendment H. R. 9280, to give the Secretary of Interior limited authority to sell certain materials from publicly owned lands by negotiated sale, rather than by competitive bidding as required by present law (this authority does not apply to national forest lands). This bill will now be sent to the President. pp. 18460-1
- Passed without amendment H. R. 10540, to exclude deposits of petrified wood from appropriation under U. S. mining laws. This bill will now be sent to the President. p. 18461
18. PUBLIC LANDS. Passed as reported S. 3160, to extend to Alaska the provisions governing the disposition of public lands under the townsite laws so as to permit tracts of land in Alaska to be sold subject to a reservation of the U. S. of coal, oil, and gas. p. 18458
19. TRADEMARKS. The Judiciary Committee voted to report (but did not actually report) H. R. 4333, to amend the Trademark Act so as to clarify certain ambiguities relating to the registration and protection of trademarks. p. D850
20. TRANSPORTATION. Sen. Carlson inserted an Arkansas City, Kans., Chamber of Commerce resolution objecting to certain provisions of the administration's proposed transportation legislation, including provision to exempt rail carriers from minimum rate regulation for transportation of bulk farm commodities. p. 18475
21. FOREIGN AGRICULTURE. Sen. Dirksen inserted a newspaper article discussing the situation in Cuba, including food supplies and collectivization of agriculture. pp. 18472-3

ITEMS IN APPENDIX

22. TEXTILES. Extension of remarks of Rep. Whitener inserting an editorial criticizing the decision of the Tariff Commission not to effect the cotton import equalization fee. pp. A6871-2.
- Extension of remarks of Rep. Hemphill inserting a resolution urging the President to take immediate action to protect domestic cotton products. p. A6875
23. FARM PROGRAM. Extension of remarks of Rep. Weaver inserting a speech by an insecticide manufacturer defending the continuing and increased efficiency of American agriculture. p. A6874

BILLS INTRODUCED

24. REORGANIZATION; EXPENDITURES. S. 3725 by Sen. Bennett, to establish a Commission on Governmental Operations and Programs; to Government Operations Committee Remarks of author, pp. 18446-7
25. COTTON. H. R. 13155, by Rep. Taylor, to provide for import fees on cotton

products during periods the United States is subsidizing the export of cotton;
to Ways and Means Committee.

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COMMITTEE HEARINGS SEPT. 18:

H. Agriculture Subcommittee on Conservation and Credit (exec., on pending legisla-
tion).

Federal pay bill, S. Civil Service (exec).

Problems of Federal-State relations, S. Gov't Operations.

Northeastern Water Resources Compact, S. Judiciary.

Foreign aid appropriations, H. Appropriations (exec).

oOo

\$50 million for a new program of direct loans to private nonprofit corporations and consumer cooperatives to build moderate-cost rental housing for the elderly, a new Farmers Home Administration insurance program to provide rental housing for the elderly in rural areas, and an increase in the rural grant ceiling from \$500 to \$1,000 for home improvements by owner-occupants whose incomes are so low they cannot qualify for loans from any source.

Sen. Williams, N. J., and Humphrey expressed their pleasure over passage of this bill. pp. 18737-8

3. FORESTRY. Sen. Stennis inserted an item by Sen. Anderson reviewing and commending a new book, "Whose Woods These Are: The Story of the National Forests." p. 18739
4. BUILDINGS. The "Daily Digest" states that the Public Works Committee approved various public buildings projects, including alterations to the South Building of this Department. p. D858
5. WILDLIFE. S. 2138, to provide that a greater percentage of the income from lands administered by the Fish and Wildlife Service be returned to the counties in which such lands are situated, which had been the Senate's unfinished business, was returned to the calendar. p. 18642
6. WATERSHEDS. Received from the Bureau of the Budget plans for works of improvement on Crooked Bayou watershed, Ark., West Fork of Pond River, Ky., Hardin Creek, Tenn., and Mill Creek, Tenn.; to Agriculture and Forestry Committee. p. 18642
Received from the Budget Bureau plans for works of improvement on Tobesofkee watershed, Ga. (supplemental), Cottonwood Creek, Okla., and Delaware Creek, Okla.; to Public Works Committee. p. 18642
7. STOCKPILE. The Armed Services Committee reported without amendment H. R. 12416, to authorize the sale, without regard to the 6-month waiting period prescribed, of chestnut extract (S. Rept. No. 2061); and H. Con. Res. 509, expressing approval of the Congress for the disposition of certain materials from the national stockpile (S. Rept. 2062). p. 18642
8. TRADEMARKS. The Judiciary Committee reported without amendment H. R. 4333, to amend the Trademark Act so as to clarify certain ambiguities relating to the registration and protection of trademarks. (S. Rept. No. 2107). p. 18642
9. OILS; TAXATION. The Finance Committee reported with amendments H. R. 5260, to make permanent the existing suspensions of the tax on the first domestic processing of coconut oil, palm oil, palm kernel oil, and fatty acids, and combination of mixtures thereof (S. Rept. No. 2102). p. 18643
10. ATOMIC ENERGY. Agreed to the conference report on H. R. 11974, the AEC authorization bill. This bill will now be sent to the President. pp. 18656-7
11. TOWNSITE LAWS. Passed with amendment H. R. 11266, to extend to Alaska the provisions governing the disposition of public lands under the townsite laws so as to permit tracts of land in Alaska to be sold subject to a reservation of the U. S. of coal, oil, and gas. Earlier had vacated action of Sept. 17 in passage of S. 3160. S. 3160 was indefinitely postponed due to passage of H. R. 11266. p. 18667

HOUSE

12. AGRICULTURAL APPROPRIATION BILL, 1963. Began consideration of the conference report on this bill, H. R. 12648. pp. 18596-606

Insisted on disagreement with the following Senate amendments:

No. 1, deleting provision for acquisition of sites by ARS by donation, exchange, or purchase at a nominal cost not to exceed \$100. p. 18601

No. 2, providing \$106,126,500 for ARS for research and demonstrations on the production and utilization of agricultural products, home economics, and related research and services. p. 18601

No. 6, to delete provision of \$760,000 for ARS for construction of facilities and acquisition of the necessary land therefor by purchase, donation or exchange. p. 18602

No. 44, reducing from \$2,278,455,000 to \$2,066,955,000 the appropriation to partially reimburse the CCC for net realized losses sustained during fiscal year 1961. p. 18606

No. 47, to provide funds under P. L. 480 for unrecovered prior years' costs including interest thereon. p. 18606

No. 48, to reduce from \$1,080,632,000 to \$700,000,000 for expenses for the sale of surplus agricultural commodities for foreign currencies pursuant to title I of P. L. 480. p. 18606

No. 49, to reduce from \$250,000,000 to \$189,000,000 for expenses for commodities disposed of for emergency famine relief to friendly peoples pursuant to title II of P. L. 480. p. 18606

No. 50, to increase from \$40,000,000 to \$50,000,000 for expenses for long term supply contracts pursuant to title IV of P. L. 480. p. 18606

No. 51 and No. 52, to provide \$15,650,000 for unrecovered prior years' cost; including interest thereon, under the International Wheat Agreement, and deleting \$81,218,000 for expenses during fiscal year 1963 under the Act. p. 18606

No. 53 and No. 54, to provide \$92,867,000 for unrecovered prior years' costs related to strategic and other materials acquired as a result of barter or exchange of agricultural commodities or products and transferred to the supplemental stockpile, and deleting \$125,000,000 for expenses during fiscal year 1963. p. 18606

Concurred in the following amendments:

No. 4, to provide that \$150,000 shall be available to ARS for the construction and equipping of facilities and acquisition of the necessary land therefor by purchase, donation, or exchange: Provided further, That no funds shall be used to formulate or administer a brucellosis eradication program for fiscal year 1964 that does not require minimum matching by any State of at least 40 percentum.

No. 25, to provide \$95,423,000 for administrative expenses for ASCS, provided that in addition, not to exceed \$51,379,500 may be transferred to and merged with this appropriation from the Commodity Credit Corporation fund, and additional amounts not to exceed \$30,000,000 may be transferred contingent upon the enactment of H. R. 12391, Food and Agriculture Act of 1962. p. 18606

No. 38, to provide that not to exceed \$225,000 shall be transferred by the Secretary from other appropriations available to the Department of Agriculture for the expenses of the Office of Internal Audit and Inspection. p. 18606

No. 40, to provide that \$50,000,000 of the appropriation for operating loans for FHA shall be placed in reserve to be used only to the extent required during the fiscal year 1963 under the then existing conditions for the

REGISTRATION AND PROTECTION OF TRADEMARKS

SEPTEMBER 18, 1962.—Ordered to be printed

Mr. McCLELLAN, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 4333]

The Committee on the Judiciary, to which was referred the bill (H.R. 4333) to amend the act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946, as amended, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of this legislation is to make a number of miscellaneous changes in the Trademark Act of 1946 so as to clarify the meaning of several of its provisions. The provisions of the bill affect details of registration, administrative and court procedure, internal organization of the Patent Office regarding trademark matters, and refinements in language that experience has shown to be desirable. It also corrects typographical errors in the Trademark Act of 1946.

STATEMENT

The facts and legislative history regarding this legislation are contained in House Report 1108, and are as follows:

VIEWS OF GOVERNMENT AGENCIES AND INTERESTED PRIVATE ORGANIZATIONS

The Department of Justice, in its report dated August 14, 1961, states that the subject of the legislation is not a matter as to which the Department of Justice has primary responsi-

bility, and accordingly makes no recommendation as to the enactment of the bill.

The Department of Commerce, in a report dated August 15, 1961, recommends enactment of the bill with certain technical and clarifying amendments.

The Department of State, in a report dated September 2, 1959, on a predecessor bill, perceived no objection to the enactment of this legislation, and in fact, expressed its support for section 20 thereof as it concerns the applicability of the act to nationals of foreign countries.

The Treasury Department, in its report of August 14, 1959, on a predecessor bill, stated that it had no recommendations to make because the proposed legislation related to matters primarily within the jurisdiction of the Department of Commerce.

The Federal Trade Commission, in its report on the instant bill, dated August 11, 1961, suggests that the jurisdiction of the Commission be expanded to permit it to file petitions for cancellation of registered marks which become, prior or subsequent to registration, the common descriptive name of an article or substance. This would include registrations issued under the Trademark Acts of 1881 and of 1905 as well as registrations issued under the Principal Register established under the Trademark Act of 1946. The committee does not think it appropriate to consider charges of this nature at this time, since the instant bill is in large part a housekeeping measure, making minimal substantive changes in the trademark law. The Federal Trade Commission's suggestions, on the other hand, would bring about a substantive change in policy. In addition, the committee has been advised that there is no present need for this particular change.

The Federal Trade Commission also objected to the proposed change in the definition of "service marks" appearing in section 45 of the Trademark Act. The committee, however, feels that the proposed change should be adopted, as it does nothing more than codify the present practice of the Patent Office in this regard.

The instant bill has the approval and support of the U.S. Trademark Association, the American Bar Association, the National Association of Manufacturers, the District of Columbia Bar Association, the Philadelphia Bar Association, the New York County Lawyers Association, and the bar of the city of New York.

LEGISLATIVE HISTORY

Similar legislation passed the Senate in the 83d Congress and again in the 86th Congress. However, the House took no action on each occasion.

Hearings were held on predecessor bills on March 25, 1954. In addition, your committee held hearings on the instant bill on August 16, 1961.

It might be well to relate some of the history of the trademark laws of the United States which led up to the instant

legislation. On July 5, 1946, the trademark laws of the United States were revised by Public Law 489, 79th Congress (ch. 540, 2d sess., 60 Stat. 427), known as the Lanham Trademark Act. It became effective on July 5, 1947, 1 year after its enactment, and completely rewrote the trademark laws of the United States and made a large number of substantial changes. During the period (about 14 years) that this act has been in operation the need of some revisions has become evident.

In 1948 representatives of some 26 legal and trade associations concerned with trademark matters were formed into a committee to study and recommend what changes in the Trademark Act could be agreed upon as necessary or desirable. As a result thereof, S. 1957 of the 82d Congress, incorporating proposed changes in the trademark laws as recommended by this committee, was introduced. That bill was the subject of considerable study and of further suggestions from individuals, associations, and Government departments. On July 31, 1953, a bill representing many of such suggestions was introduced in the 83d Congress. This bill was S. 2540. As stated, that bill was the subject of hearings; amendments were made, and a bill as an amendment in the nature of a substitute was drafted. The hearings were held on March 25, 1954, and representatives of interested associations recommended enactment of the legislation. The various Government departments interested in the subject matter of the bill submitted reports of their views. The bill was then favorably reported on August 5, 1954, and was passed by the Senate on August 11, 1954, but was not acted upon by the House of Representatives prior to adjournment.

Again, in the 84th Congress, a bill was introduced which was in the wording of S. 2540, being S. 215 of the 84th Congress, but no action was taken thereon. In the 86th Congress a bill (S. 2429) similar to the previous bills but not covering all of the features contained in the prior legislation, passed the Senate. This bill has been termed as a "housekeeping" bill and was considered to be not controversial. The various departments of Government had, with the exception of certain technical amendments, no objection to this legislation.

Hearings were held on the instant bill (H.R. 4333) on August 16, 1961. The bill makes numerous amendments to the Trademark Act of 1946. They are set forth later in this report under a heading entitled "Analysis of Legislation." Some of the amendments merely correct typographical errors which appeared in the 1946 act; some involve matters of clarification of meaning, and some make desirable changes in substance as well as in details of procedure.

ANALYSIS OF LEGISLATION

An analysis of the provisions of H.R. 4333 follows:

Section 1 of the bill proposes to amend, in several respects, section 1(a)(1) of the act, which relates to the statements required of an applicant for registration of a trademark.

The first amendment proposes to amend the phrase which now reads: "that no other person, * * * has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive" by canceling the underscored words and substituting—"as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive". The purpose of this amendment is to make the required allegation of the applicant more nearly complete and more accurate.

The second amendment is the cancellation of the words "or services", which appear in the proviso to section a(a) (1). This is for uniformity of drafting and does not affect the meaning.

Section 2 of the bill proposes to make a number of changes in section 2 of the act.

The first clause of section 2(d) of the act provides that a mark is to be refused registration if it so resembles a mark registered in the Patent Office or a mark previously used by another, as to be likely when applied to the goods of the applicant, "to cause confusion or mistake or to deceive purchasers." The bill proposes to revise the quoted expression to read "to cause confusion, or to cause mistake, or to deceive." The purpose of the proposed change is to coordinate the language here with that used elsewhere and to omit the word "purchasers", since the provision actually relates to potential purchasers as well as to actual purchasers. The word "purchasers" is eliminated so as to avoid the possibility of misconstruction of the present language of the statute.

Section 2(d) of the act contains a long proviso relating to so-called concurrent registrations of trademarks. The bill, as amended, proposes to rewrite this proviso, amending it in a number of respects. The principal amendment is to enlarge the limiting dates after which rights to concurrent registrations cannot accrue. The amendment will increase the possibility of a concurrent registration insofar as the dates involved are concerned.

The act now states that concurrent registrations are to be granted when confusion or mistake or deceit of purchasers is not likely to result from the continued use of the marks—"under conditions and limitations as to the mode or place of use or the goods in connection with which such registrations may be granted." There is considerable confusion in the interpretation of this language, which is far from clear. The bill proposes to amend the particular phrase to read: "under conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, * * *". This language is much clearer than the original language.

A few simplifications over the language of the present proviso additionally are made.

Section 3 of the bill proposes to rewrite section 6 of the act relating to disclaimers.

Section 4 of the bill would revise section 7(a) of the act relating to the formalities of issuing a registration. The proposed language is simpler than the present wording of the statute and would enable the Patent Office to effect economies in printing the registrations.

Section 4 of the bill would also rewrite section 7(d) of the act, effecting considerable clarification and at the same time making several changes. First, the requirement for a fee in connection with the voluntary surrender or cancelation of a registration by the registrant is removed. Such surrenders or voluntary cancelations are very rare and the fee may have deterred others which would have been made. Second, it is proposed to omit the words "in whole or" from the clause in the present section which now states that the Commissioner may "permit any registered mark to be disclaimed in whole or in part." The underlined words are not seen to be necessary.

Section 4 of the bill would further make certain language changes in section 7(e) of the act to provide consistency throughout the act and would desirably provide for any duly designated employee, rather than only a chief of a division, to certify copies of Patent Office records.

Section 4 of the bill would eliminate the present requirements in section 7(f) of the act that the Commissioner sign all certificates of correction, and would make certain language changes to provide consistency throughout the act.

Section 5 of the bill proposes to amend section 9 of the act relating to the renewal of trademark registrations. The act now requires the registrant, prior to renewal, to file an affidavit stating that the mark is still in use in commerce. The proposed change permits the registrant to obtain the renewal of the registration even if the mark is not then being used, provided that the nonuse is due to special circumstances which excuse the nonuse and is not due to any intention to abandon the mark.

The affidavit now required by this section of the act must state that the mark is in use in commerce, but there is no requirement that the affidavit specify the goods on which the mark is used. Since the proposed amendment provides for an excuse for nonuse due to special circumstances, the amendment also provides that the affidavit (verified application) must set forth those goods recited in the registration on which said mark is still in use in commerce. There must also be attached a specimen or facsimile showing current use of the mark. These additional provisions are particularly desirable. Renewals are extensions of the registrations for 20 years, and the Patent Office records should reflect the goods on which the marks are then being used.

Section 6 of the bill proposes to amend section 10 of the act by canceling the following proviso:

"Provided, That any assigned registration may be canceled at any time if the registered mark is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used."

The purpose in canceling this proviso is to incorporate it in broader form, as a requirement applying to any registrant, in section 14, which is a more appropriate part of the act.

The bill would also revise the language of the sentence dealing with records of assignment, but there is no change in substance proposed.

Section 7 of the bill proposes to amend section 12(a) of the act by adding the following proviso:

"Provided, That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference as provided for in section 16 of this Act, the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings."

The purpose of this addition is to effect a minor simplification in the Patent Office procedure.

Section 7 of the bill would also revise and clarify the last sentence of subsection (c) of section 12.

Section 8 of the bill would add a sentence to section 13 of the act to permit an opposition to be amended, and it would strike the words "notice of", each occurrence, thereby making the section refer to "opposition" rather than "notice of opposition."

Section 14(c) of the act provides, as one of the grounds for canceling a registration at any time—"if the registered mark becomes the common descriptive name of an article or substance on which the patent has expired"—the amendment in the bill cancels the words—"on which the patent has expired." Section 14(c) of the act also provides as a ground for cancellation at any time—"if the registered mark has been assigned and is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used." This language is replaced by the following broader language of the bill:

"if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used."

Section 10 of the bill would make a change in section 15 of the act required by the revision and relettering of paragraphs in section 14.

"Section 10 of the bill also proposes to amend section 15 of the act by canceling from item 4 the underscored words in the following quotation:

"(4) no incontestable right shall be acquired in a mark or trade name which is the common descriptive name of any article or substance."

The underlined words should be canceled since trade names, as such are not registered.

Section 11 of the bill proposes a change in section 16 of the act corresponding to a change made in section 2(d)

Section 12 of the bill proposes to rewrite completely section 21 of the act dealing with appeals to the U.S. Court of Cus-

toms and Patent Appeals and other judicial review of Patent Office decisions. The act now incorporates by reference the procedure of appeals to the Court of Customs and Patent Appeals and review by civil action in patent cases. The proposed amendment incorporates, with necessary changes in language, the various provisions of title 35 relating to such appeals and review.

Section 23 of the act, referred to in section 13 of the act, requires that in order for a mark to be eligible for registration on the Supplemental Register it must have been in lawful use for the year preceding the filing of the application. However, this section further provides that where an applicant required domestic registration as a basis for foreign protection of his mark, upon a proper showing that he has begun the lawful use of his mark in foreign commerce, the Commissioner may waive the requirement for a full year's use and may grant registration forthwith. Section 13 of the bill proposes to amend section 23 of the act to eliminate the requirement that the mark be in use in foreign commerce before the Commissioner can waive the requirement for a full year's use in order to be eligible for registration. This proposal does not eliminate the fundamental requirement that the mark actually be in use before it can be registered. The section as amended merely provides for waiving the length of time of use.

Section 14 of the bill proposes to amend section 24 of the act by adding the phrase: “, upon payment of the prescribed fee and the filing of a verified petition stating the ground therefor,” in order to make the language correspond to that used in the amendment to section 14 of the act.

Section 15 of the bill would clarify section 29 of the act relating to marking requirements.

Section 16 of the bill would amend section 30 of the act by changing the mandatory requirement of establishing internal classification of goods to a discretionary provision; and it would clarify language dealing with multiple applications.

Section 17 of the bill proposes to rewrite section 32(1) of the act, making several changes and rearranging the language.

One change is the omission of the underlined words from the following quotation from clause (a) :

“on or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers as to the source or origin of such goods or services”

This change is parallel to a similar change made in section 2(d) of the act.

Section 17 of the bill also proposes to amend section 32(2) of the act to correct a typographical error.

Section 18 of the bill would make amendments in subsections (a) and (b) of section 33 of the act. The amendments to subsection (a) and the opening paragraph of subsection (b) are an improvement in accuracy. The amendment to

paragraph (3) of subsection (b) is parallel to amendments to sections 10 and 14. The amendments to paragraphs (5) and (6) of subsection (b) change a limiting date.

Section 19 of the bill proposes to correct a typographical error in section 35 of the act.

Section 20 of the bill proposes to amend section 44(b) of the act by adding a reference to a country which extends reciprocal rights to nationals of the United States by law and by revising the language to a more understandable form. This amendment is considered desirable.

Section 20 of the bill also proposes to amend section 44(e) of the act and effects considerable improvement therein.

Section 21 of the bill proposes six amendments to section 45 of the act which contains definitions.

The first of these amendments, to the sixth paragraph of the section, amends the definition of "applicant" and "registrant" to include "predecessors."

The ninth paragraph is amended to correct a typographical error in the omission of a comma.

The 11th paragraph, the definition of service mark, is amended to permit titles of radio and television programs to be registered as service marks even though they advertise goods.

The amendments to the 15th paragraph amplify the definition of use in commerce with respect to service marks.

The definition of colorable imitation, in the 17th paragraph of the act, is amended to cancel the word "purchasers," in line with the amendment to section 2(d) of the act.

The last amendment corrects a typographical error in the final paragraph of section 45.

The chairman of the Subcommittee on Patents, Trademarks, and Copyrights of this committee also received a communication from the Federal Trade Commission, dated November 29, 1961, in which it was proposed that the jurisdiction of the Commission be expanded to permit the Commission to petition for cancellation of registered marks which become, prior or subsequent to registration, the common descriptive name of an article or substance. After consideration, the committee concurs in the judgment of the House Committee on the Judiciary that it is not appropriate at this time to include substantive changes of such nature inasmuch as H.R. 4333 is in large part a house-keeping measure designed to make minimal substantive changes in the trademark law.

After a review of the facts and after study of the various governmental reports, hertofore identified, the committee concurs in the action of the House of Representatives and recommends that the bill be given favorable consideration.

The agency reports referred to herein are attached and made a part of this report, as follows:

FEDERAL TRADE COMMISSION,
Washington, D.C., November 29, 1961.

HON. JOHN L. McCLELLAN,
*Chairman, Subcommittee on Patents, Trademarks and Copyrights,
Committee on the Judiciary, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is written in anticipation of consideration by your committee of a bill to amend the Trademark Act,

H.R. 4333, 87th Congress, 1st session, passed by the House of Representatives on September 18, 1961.

The Federal Trade Commission submitted a report under date of August 11, 1961, a copy of which is enclosed herewith, to the House Committee on the Judiciary, in which it suggested for the consideration of that committee two proposed amendments.

The first of these pertained to an amendment to section 14(c) of the Trademark Act which would enable the Commission to cancel a registered trademark which was descriptive at the time of registration as well as one that acquired this characteristic after registration. The second amendment related to wording of the proviso to section 14 of the Trademark Act.

The Commission's reasons for sponsoring these amendments are set forth in its report to the House committee. The House committee did not consider these amendments because, as stated in its report, the committee was of the opinion that they were substantive in nature and the subject bill was in large part a "housekeeping measure."

The Commission respectfully requests your committee to consider these amendments in connection with its study of H.R. 4333 or any companion bill which may be introduced in the Senate. As was stated in its report to the House committee, the Commission believes that adoption of these amendments would correct the effects of prior interpretations of the Trademark Act that are regarded as unduly restrictive.

After the House of Representatives passed H.R. 4333, a conference was held by representatives of the Federal Trade Commission and Patent Office, and counsel for the subcommittee of the House Committee on the Judiciary, which considered H.R. 4333. It was the consensus of the conference that the objective of the first amendment could be accomplished if the word "becomes" in the first line of section 14(c) of the Trademark Act is changed to "is."

The total effect of such a change would make the first ground for cancellation, as set forth in section 14(c) of the Trademark Act, read: "(c) at any time, if the registered mark is the common descriptive name of an article or substance." This method of removing the timing implication was suggested at the conference by the representatives of the Patent Office, and it was agreed by all that such a change is simpler than the amendment which was proposed originally by the Commission in its report to the House committee. We recommend this new language of the amendment to your committee.

As to the second proposed amendment, the reasons for its enactment are detailed in the Commission's report of August 11. In that report the Commission also advocated a third amendment which referred to the definition of "Service Mark." Since it would pertain to a matter not directly within the jurisdiction of the Commission, we are not asking your committee to consider it.

Should the committee desire any further report from the Commission as to the first two amendments, we will be happy to supply it.

By direction of the Commission:

PAUL RAND DIXON, *Chairman.*

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., August 14, 1961.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H.R. 4333) to amend the act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes," approved July 5, 1946, as amended. This is also in response to your kind invitation to have a representative attend the hearings on the bill before subcommittee No. 3 on August 16.

The bill would make a number of changes in the Trademark Act of July 5, 1946, with respect to registration, administrative and court procedure, and internal organization of the Patent Office regarding trademark matters.

Inasmuch-as the bill does not involve matters of primary concern to the Department of Justice, we prefer to make no recommendation as to its enactment, and do not plan to have a representative at the hearings.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

BYRON R. WHITE,
Deputy Attorney General.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., August 15, 1961.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This letter is in reply to your request for the views of the Department of Commerce with respect to H.R. 4333, a bill to amend the act entitled "An act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes," approved July 5, 1946, as amended.

The bill would make a number of administrative, clarifying and correcting amendments in the Trademark Act. Attached is a copy of a memorandum from the Acting Commissioner of Patents in which he has made a section-by-section analysis of the bill and has also suggested changes in and additions to the bill.

The Department recommends enactment of H.R. 4333 with the amendments suggested by the Patent Office.

The Bureau of the Budget advises there would be no objection to the transmission of this report from the standpoint of the administration's program.

Sincerely,

ROBERT E. GILES, *General Counsel.*

DEPARTMENT OF STATE,
Washington, September 2, 1959.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate.

DEAR SENATOR EASTLAND: I refer to your letter of July 30, 1959, with respect to S. 2429, a bill to amend the act, entitled "An act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of international conventions, and for other purposes," approved July 5, 1946, as amended, and to the Department's interim reply of August 3, 1959.

The Department perceives no objection to the enactment of this bill. Most of its provisions are of a technical nature and are not of direct interest from the foreign policy standpoint. The Department, however, wishes to express its support for section 20 of the bill which would amend the provisions of section 44(b) concerning applicability of the act to nationals of foreign countries. This amendment will provide a clearer basis for the establishment of reciprocal relations with other governments in the field of trademarks. This is, of course, desirable in securing for our own nationals the fullest possible protection abroad of their trademarks.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

WILLIAM B. MACOMBER, Jr.,
Assistant Secretary
(For the Acting Secretary of State).

THE GENERAL COUNSEL OF THE TREASURY,
Washington, August 14, 1959.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

MY DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 2429, to amend the act entitled "An act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of international conventions, and for other purposes", approved July 5, 1946, as amended.

The proposed legislation would amend the so-called Trademark Act of 1946 to correct typographical errors, to clarify language, to make changes in procedure and to make some substantive changes in the law.

Since the proposed legislation relates to matters primarily within the jurisdiction of the Department of Commerce and would not affect any statute administered by the Treasury Department, the Department has no recommendations to make on the bill.

Very truly yours,

NELSON P. ROSE, *General Counsel.*

FEDERAL TRADE COMMISSION,
Washington, D.C., August 11, 1961.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
 House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request of June 15, 1961, to report on H.R. 4333, 87th Congress, 1st session, a bill to amend the act entitled "an Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions and for other purposes" approved July 5, 1946, as amended.

The bill seeks to amend the Trademark Act of 1946 as to several sections, including that which defines the grounds for cancellation of trademarks which are available to the Federal Trade Commission. The bill, by eliminating surplusage from the provisions of the existing law as to the cancellation of a registration because the trademark has become descriptive obviously is intended to facilitate the removal of registrations from the register by cancellation, when such registrations were acquired, or exist after registration, under circumstances not entitling them to registration.

Section 9 of the subject bill thus amends section 14 of the Trademark Act of 1946 by rewriting the entire section. Subsection (c) of the rewritten section 14, of the subject bill, reads as follows:

"(c) At any time if the registered mark becomes the common descriptive name of an article or substance of has been abandoned
 * * *"

This proposed amendment to section 14 of the Trademark Act eliminates the language in the present statute which limits the cancellation of descriptive names to those of articles or substances "on which the patent has expired."

The Commission feels that the proposed subsection (c) of section 14, as provided in section 9 of the subject bill, still limits the cancellation of descriptive names to those which became descriptive after registration.

This limitation, it is believed, will prevent the proposed subsection (c) from serving the purpose of providing as a ground for the cancellation of registrations, the same conditions that would have prevented registration had they existed at the time of application and been known to the Patent Office.

Requests for action by the Federal Trade Commission to exercise the authority granted it by the proviso to subsection (d) of section 14 by the present act (sec. 14(e) as amended by H.R. 4333) have shown that in numerous instances the Patent Office has registered words as trademarks which were descriptive at the time and not recognized as such, because relating to special fields or industries. The need for action in the public interest to terminate trademark monopolies occurs most frequently in connection with marks which are in fact descriptive of the products to which they are applied. In the appeal of *Bart Schwartz International Textiles, Ltd. v. the Federal Trade Commission* (129 U.S.P.Q. 258 decided by the U.S. Court of Customs and Patent Appeals on April 14, 1961), it was held that the Commission could not cancel the registration of "fiocco" merely because it was descriptive and in common use at the time of registration. While this decision was a construction of the intent of the present section 14(c) with the

double limitation imposed by the patent wording and the time implication, it is an indication that the courts will confine cancellation for descriptiveness to situations clearly within the literal wording of the statute and that legislative change will be necessary to permit the cancellation of trademark registrations upon proof of the same facts that would have prevented registration if known to the Patent Office at the time of application.

In order to eliminate any uncertainty that the basic statutory prohibitions of section 2(e), against the registration of marks which are descriptive of the goods of the applicant, can be made effective when discovered after registration as well as before, it is recommended that the subject bill further amend subsection 14(c) of the Trademark Act so that its first provision will read as follows:

“(c) at any time if the registered mark has become, prior or subsequent to registration, the common descriptive name of an article or substance, * * *.”

Any proposal to amend the Trademark Act should, in the opinion of the Commission, include an amendment to the specific wording of the proviso to section 14 which will remove a limitation resulting from an interpretation of the Commissioner of Patents in his 1950 decision in the two early cases of the *Federal Trade Commission v. Elder Mfg. Co. and Royal Mfg. Co.* which were consolidated and reported at 84 U.S.P.Q. 429. The present wording of the proviso was construed by the Commissioner of Patents to limit the authority of the Commission to petition for cancellation of registrations which were initially registered under the provisions of the 1946 act and not to extend to registrations under the prior acts of 1881 and 1905 although the effectiveness of such registrations may have been extended to the present or been renewed by operation of section 46(b) of the act. It is recommended that the following amendment to the proviso be adopted which, in our opinion, should remove any interference of language with the clear intent of Congress, acting in the public interest, to authorize the Commission to apply those grounds of cancellation described in section 14 to all registrations which are subject to cancellation under the provisions of that Section.

It is proposed that the wording of the proviso at the end of section 14, as rewritten by section 9 of H.R. 4333, be changed by striking the words “registered on the principal register established by this act,” and inserting a substitute, therefor, so as to make the entire proviso read: “*Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in subsections (c) and (e) of this section any mark subject to cancellation under the provisions of this section and the prescribed fee shall not be required.*”

The bill also provides in section 21 an amendment to the 11th paragraph of section 45 of the Trademark Act of 1946, by striking the definition contained in said paragraph in its entirety and substituting therefor a new paragraph.

The present paragraph reads:

“The term ‘Service Mark’ means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising used in commerce.”

The proposed substitute paragraph reads:

"The term 'Service Mark' means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor."

It is our belief that the substituted paragraph does improve the general draftsmanship and form of the existing paragraph without adding anything really new except for the last clause, "*notwithstanding that they, or the programs, may advertise the goods of the sponsor.*" The italicized portion is important in that it may discernibly function to allow the enunciator, broadcasting company or advertiser to secure registration of a slogan developed and used in the interest of some product-producing sponsor. The wording seems to state that a separation between the entity rendering the service and the sponsoring patron should not prevent the registration by the rendering service. The italicized language, as a modification by amendment, could be interpreted to sanction the acquisition of rights in promotional material by the broadcasting or advertising services rather than the sponsor for whom the material was prepared and presented. No other purpose is discernible.

We are of the opinion that the proposal to amend section 45 does considerable violence to the whole theory of a "service mark" because it tends to give a party rendering a service a property interest in the results or products of his service which are not related to the service which he performs.

We believe that the only function which the italicized language might possibly perform is to remove a ground for rejection by the Patent Office that the proposed mark advertises the goods of a separate party rather than the registrant's service function. It follows that the advertising agency may acquire an exclusive control of a phrase developed for its client and perhaps could prevent the client using that phrase independently or through another agency. Thus the advertiser may, through the trademark statute, possibly secure control of what is really his client's property.

While it is recognized that the amendment of the definition of "service mark" does not modify language which is the operational basis of the Commission's authority to cancel registrations, the amendment does confuse the basis for registration in an area which may be involved in proceedings by the Commission.

As the agency authorized by the Congress to move in the public interest to terminate the statutory trademark monopoly, when improperly acquired or held by the registrant, the Commission is interested in proposed changes which extend the monopoly without commercial necessity or business justification. The opportunity to comment on the amendments proposed by H.R. 4333, which is afforded by the referral of your committee, is appreciated.

By direction of the Commission.

PAUL RAND DIXON, *Chairman.*

N.B.—Pursuant to regulations, this report was submitted to the Bureau of the Budget on July 12, 1961, and on August 11, 1961, the Bureau of the Budget advised that there is no objection to the sub-

mission of this report from the standpoint of the administration's program.

JOSEPH N. KUZEW, *Acting Secretary.*

CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman) :

PUBLIC LAW 489, 79TH CONG., 2D SESS.

(60 Stat. 427)

TITLE I—THE PRINCIPAL REGISTER

SECTION 1. The owner of a trade-mark used in commerce may register his trade-mark under this Act on the principal register hereby established:

(a) By filing in the Patent Office—

(1) a written application, in such form as may be prescribed by the Commissioner, verified by the applicant, or by a member of the firm or an officer of the corporation or association applying, specifying applicant's domicile and citizenship, the date of applicant's first use of the mark, the date of applicant's first use of the mark in commerce, the goods in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods, and including a statement to the effect that the person making the verification believes himself, or the firm, corporation, or association in whose behalf he makes the verification, to be the owner of the mark sought to be registered, that the mark is in use in commerce, and that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto [as might be calculated to deceive:] *as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive: Provided,* That in the case of every application claiming concurrent use the applicant shall state exceptions to his claim of exclusive use, in which he shall specify, to the extent of his knowledge, any concurrent use by others, the goods [or services] in connection with which and the areas in which each concurrent use exists, the periods of each use, and the goods and area for which the applicant desires registration;

(2) a drawing of the mark; and

(3) such number of specimens or facsimiles of the mark as actually used as may be required by the Commissioner.

(b) By paying into the Patent Office the filing fee.

(c) By complying with such rules or regulations, not inconsistent with law, as may be prescribed by the Commissioner.

(d) If the applicant is not domiciled in the United States he shall designate by a written document filed in the Patent Office the name

and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with him or mailing to him a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner.

MARKS REGISTRABLE ON THE PRINCIPAL REGISTER

SEC. 2. No trade-mark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(a) consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute;

(b) consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof;

(c) consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow;

(d) consists of or comprises a mark which so resembles a mark registered in the Patent Office or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause [confusion or mistake or to deceive purchasers: *Provided*, That the Commissioner may register as concurrent registrations the same or similar marks to more than one registrant when they have become entitled to use such marks as a result of their concurrent lawful use thereof in commerce prior to any of the filing dates of the applications involved and the Commissioner or a court on appeal determines that confusion or mistake of deceit of purchasers is not likely to result from the continued use of said marks under conditions and limitations as to the mode or place of use or the goods in connection with which such registrations may be granted which conditions and limitations shall be prescribed in the grant of the concurrent registrations thereof; and concurrent registrations may be similarly granted by the Commissioner with such conditions and limitations when a court has finally determined that more than one person is entitled to use the same or similar marks in commerce. The Commissioner shall give not less than 30 days written notice to all applicants, registrants, and users specified by any of the parties concerned of any application for concurrent registration and of the time and place of the hearings thereon. When the Commissioner decides to grant a concurrent registration the proposed registration shall be published in the Official Gazette of the Patent Office and the application shall be subject to opposition as hereinafter provided for other applications to register marks. Concurrent registrations may be ordered by a court in an action under the provisions of 35 United States Code, sections 145 or 146, under such conditions and limitations as the court considers proper in accordance herewith.] *confusion, or to cause mistake, or to deceive: Provided, That when the*

Commissioner determines that confusion, mistake or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (i) the earliest of the filing dates of the applications pending or of any regulations issued under this Act; (ii) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (iii) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods in connection with which such mark is registered to the respective persons.

* * * * *

DISCLAIMERS

[SEC. 6. The Commissioner shall require unregistrable matter to be disclaimed, but such disclaimer shall not prejudice or affect the applicant's or owner's rights then existing or thereafter arising in the disclaimed matter, nor shall such disclaimer prejudice or affect the applicant's or owner's rights of registration on another application of later date if the disclaimed matter has become distinctive of the applicant's or owner's goods or services.]

SEC. 6. (a) The Commissioner may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

(b) No disclaimer, including those made under paragraph (d) of section 7 of this Act, shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services.

CERTIFICATES

SEC. 7. (a) Certificates of registration of marks registered upon the principal register shall be issued in the name of the United States of America, under the seal of the Patent Office, and shall [either] be signed by the Commissioner or have his [name printed] signature placed thereon [and attested by an assistant commissioner or by one of the law examiners duly designated by the Commissioner, and a record thereof, together with printed copies of the drawing and statement of the applicant, shall be kept in books for that purpose.] and a record thereof, shall be kept in the Patent Office. The [certificate] registration shall reproduce [the drawing of] the mark, and state that the mark is registered on the principal register under this Act, the date of first use of the mark, the date of the first use of the mark in commerce, the particular goods or services for which it is registered,

the number and date of the registration, the term thereof, the date on which the application for registration was received in the Patent Office, and any conditions and limitations that may be imposed in [the grant of] the registration.

* * * * *

(d) [At any time, upon application of the registrant and payment of the fee herein provided, the Commissioner may permit any registration in the Patent Office to be surrendered, canceled, or for good cause to be amended, and he may permit any registered mark to be disclaimed in whole or in part: *Provided, That the registration when so amended shall still contain registrable matter and the mark as amended shall still be registrable as a whole, and that such amendment or disclaimer does not involve such changes in the registration as to alter materially the character of the mark. The Commissioner shall make appropriate entry upon the records of the Patent Office and upon the certificate of registration or, if said certificate is lost or destroyed, upon a certified copy thereof.*] *Upon application of the registrant the Commissioner may permit any registration to be surrendered for cancelation, and upon cancelation appropriate entry shall be made in the records of the Patent Office. Upon application of the registrant and payment of the prescribed fee, the Commissioner for good cause may permit any registration to be amended or to be disclaimed in part: Provided, That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the Patent Office and upon the certificate of registration or, if said certificate is lost or destroyed, upon a certified copy thereof.*

(e) Copies of any records, books, papers or drawings belonging to the Patent Office relating to marks, and copies of [certificates of] registrations, when authenticated by the seal of the Patent Office and certified by the Commissioner, or in his name by [a chief of division] *an employee of the Office* duly designated by the Commissioner, shall be evidence in all cases wherein the originals would be evidence; and any person making application therefor and paying the fee required by law shall have such copies.

(f) Whenever a material mistake in a registration, incurred through the fault of the Patent Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake [, signed by the Commissioner and sealed with the seal of the Patent Office;] shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration [certificate] and such corrected [certificate] *registration* shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Commissioner a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the rules of the Patent Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute.

* * * * *

SEC. 9. [Each registration may be renewed for periods of 20 years from the end of the expiring period upon the filing of an application therefor accompanied by an affidavit by the registrant stating that the mark is still in use in commerce and the payment of the renewal

fee required by this Act; and such application may be made at any time within 6 months before the expiration of the period for which the certificate of registration was issued or renewed, or it may be made within 3 months after such expiration on payment of the additional fee herein provided. [An applicant for renewal not domiciled in the United States shall be subject to and comply with the provisions of section 1(d) hereof.] (a) *Each registration may be renewed for periods of twenty years from the end of the expiring period upon payment of the prescribed fee and the filing of a verified application thereof, setting forth those goods or services recited in the registration on or in connection with which the mark is still in use in commerce and having attached thereto a specimen or facsimile showing current use of the mark, or showing that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. Such application may be made at any time within six months before the expiration of the period for which the registration was issued or renewed, or it may be made within three months after such expiration on payment of the additional fee herein provided.*

(b) *If the Commissioner refuses to renew the registration, he shall notify the registrant of his refusal and the reasons therefor.*

(c) *An applicant for renewal not domiciled in the United States shall be subject to and comply with the provisions of section 1(d) hereof.*

SEC. 10. A registered mark or a mark for which application to register has been filed shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark, and in any such assignment it shall not be necessary to include the goodwill of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted: [Provided, That any assigned registration may be canceled at any time if the registered mark is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used,] Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment and when recorded in the Patent Office the record shall be prima facie evidence of execution. An assignment shall be void as against any subsequent purchaser for a valuable consideration without notice, unless it is recorded in the Patent Office within 3 months after the date thereof or prior to such subsequent purchase. [The Commissioner shall keep a separate record of such assignments submitted to him for recording.] *A separate record of assignments submitted for recording hereunder shall be maintained in the Patent Office.*

An assignee not domiciled in the United States shall be subject to and comply with the provisions of section 1(d) hereof.

* * * * *

PUBLICATION

SEC. 12(a). Upon the filing of an application for registration and payment of the fee herein provided, the Commissioner shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and, if on such examination it shall appear that the applicant is entitled to registration, the Com-

missioner shall cause the mark to be published in the Official Gazette of the Patent Office: *Provided, That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference, as provided for in section 16 of this Act, the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings.*

* * * * *

(c) A registrant of a mark registered under the provision of the Act of March 3, 1881, or the Act of February 20, 1905, may, at any time prior to the expiration of the registration thereof, upon the payment of the prescribed fee file with the Commissioner an affidavit setting forth those goods stated in the registration on which said mark is in use in commerce and that the registrant claims the benefits of this Act for said mark. The Commissioner shall publish notice thereof with a reproduction of said mark in the Official Gazette, and notify the registrant of such publication and of the requirement for the affidavit of use or nonuse as provided for in subsection (b) of section 8 of this Act. **[This]** *marks published under this subsection shall not be subject to the provisions of section 13 of this Act.*

OPPOSITION

SEC. 13. Any person who believes that he would be damaged by the registration of a mark upon the principal register may, upon payment of the required fee, file a verified **[notice of]** opposition in the Patent Office, stating the grounds therefor, within thirty days after the publication under subsection (a) of section 12 of this Act of the mark sought to be registered. For good cause shown, the time for filing **[notice of]** opposition may be extended by the Commissioner, who shall notify the applicant. An unverified opposition may be filed by a duly authorized attorney, but such opposition shall be null and void unless verified by the opposer within a reasonable time after such filing to be fixed by the Commissioner. *An opposition may be amended under such conditions as may be prescribed by the Commissioner.*

CANCELLATION

SEC. 14. **[Any person who believes that he is or will be damaged by the registration of a mark on the principal register established by this Act, or under the Act of March 3, 1881, or the Act of February 20, 1905, may upon the payment of the prescribed fee, apply to cancel said registration—**

(a) within 5 years from the date of the registration of the mark under this Act; or

(b) within 5 years from the date of the publication under section 12(c) hereof of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905; or

(c) at any time if the registered mark becomes the common descriptive name of an article or substance on which the patent has expired, or has been abandoned or its registration was obtained fraudulently or contrary to the provisions of section 4 or of subsections (a), (b), or (c) of section 2 of this Act for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered

mark has been assigned and is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used, or if the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 12 of this Act; or

(d) at any time in the case of a certification mark on the ground that the registrant (1) does not control, or is not able legitimately to exercise control over, the use of such mark, or (2) engages in the production or marketing of any goods or services to which the mark is applied, or (3) permit the use of such mark for other purposes than as a certification mark, or (4) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.

Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in subsections (c) and (d) of this section any mark registered on the principal register established by this Act, and the prescribed fee shall not be required.] A verified petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed by any person who believes that he is or will be damaged by the registration of a mark on the principal register established by this Act, or under the Act of March 3, 1881, or the Act of February 20, 1905—

(a) *within five years from the date of the registration of the mark under this Act; or*

(b) *within five years from the date of publication under section 12(c) hereof of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905; or*

(c) *at any time if the registered mark becomes the common descriptive name of an article or substance, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 4 or of subsection (a), (b), or (c) of section 2 of this Act for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used; or*

(d) *at any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 12 of this Act; or*

(e) *at any time in the case of a certification mark on the ground that the registrant (1) does not control, or is not able legitimately to exercise control over, the use of such mark, or (2) engages in the production or marketing of any goods or services to which the certification mark is applied, or (3) permits the use of the certification mark for purposes other than to certify, or (4) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.*

Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in subsections (c) and (e) of this section any mark registered on the principal register established by this Act, and the prescribed fee shall not be required.

SEC. 15. Except on a ground for which application to cancel may be filed at any time under subsections (c), and [(d),] (e) of section 14 of this Act, and except to the extent, if any, to which the use of a mark registered on the principal register infringes a valid right acquired under the law of any State or Territory by use of a mark or trade name continuing from a date prior to the date of the publication under this Act of such registered mark, the right of the registrant to use such registered mark in commerce for the goods or services on or in connection with which such registered mark has been in continuous use for 5 consecutive years subsequent to the date of such registration and is still in use in commerce, shall be incontestable: *Provided, That—*

* * * * * *

(4) no incontestable right shall be acquired in a mark [or trade-name] which is the common descriptive name of any article or substance, patented or otherwise.

* * * * * *

INTERFERENCE

SEC. 16. Whenever application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when applied to the goods or when used in connection with the services of the applicant to cause confusion or mistake or to deceive [purchasers], the Commissioner may declare that an interference exists. No interference shall be declared between an application and the registration of a mark the right to the use of which has become incontestable.

* * * * * *

Sec. 21. [Any applicant for registration of a mark, party to an interference proceeding, party to an opposition proceeding, party to an application to register as a lawful concurrent user, party to a cancellation proceeding, or any registrant who has filed an affidavit as provided in section 8, who is dissatisfied with the decision of the Commissioner or the Trademark Trial and Appeal Board may appeal to the United States Court of Customs and Patent Appeals or may proceed under 35 United States Code, sections 145 and 146, as in the case of applicants for patents, under the same conditions, rules, and procedure as are prescribed in the case of patent appeals or proceedings so far as they are applicable: *Provided, That* any party who is satisfied with the decision of the Trademark Trial and Appeal Board shall, upon the filing of an appeal to the Court of Customs and Patent Appeals by any dissatisfied party, have the right to elect to have all further proceedings under 35 United States Code, section 146, by election as provided in 35 United States Code, section 141. The Commissioner of Patents shall not be a necessary party to an inter partes proceeding under 35 United States Code, section 146, but he shall be notified of the filing of the bill by the clerk of the court in which it is filed and the Commissioner shall have the right to intervene in the action.] (a) (1) *An applicant for registration of a mark, party to an interference proceeding, party to an opposition proceeding, party to an application to register as a lawful concurrent user, party to a*

cancellation proceeding, a registrant who has filed an affidavit as provided in section 8, or an applicant for renewal, who is dissatisfied with the decision of the Commissioner or Trademark Trial and Appeal Board, may appeal to the United States Court of Customs and Patent Appeals thereby waiving his right to proceed under section 21(b) hereof: *Provided*, That such appeal shall be dismissed if any adverse party to the proceeding, other than the Commissioner, shall within twenty days after the appellant has filed notice of appeal according to section 21(a)(2) hereof, files notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 21(b) hereof. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under said section 21(b), in default of which the decision appealed from shall govern the further proceedings in the case.

(2) When an appeal is taken to the United States Court of Customs and Patent Appeals, the appellant shall give notice thereof to the Commissioner, and shall file in the Patent Office his reasons of appeal, specifically set forth in writing, within such time after the date of the decision appealed from, not less than sixty days, as the Commissioner appoints.

(3) The court shall, before hearing such appeal, give notice of the time and place of the hearing to the Commissioner and the parties thereto. The Commissioner shall transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant and any additional papers and evidence specified by the appellee, and in an *ex parte* case the Commissioner shall furnish the court with the grounds of the decision of the Patent Office, in writing, touching all the points involved by the reasons of appeal.

(4) The court shall hear and determine such appeal on the evidence produced before the Patent Office, and the decision shall be confined to the points set forth in the reasons of appeal. Upon its determination, the court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent Office and govern the further proceedings in the case.

(b)(1) Whenever a person authorized by section 21(a) hereof to appeal to the United States Court of Customs and Patent Appeals is dissatisfied with the decision of the Commissioner or Trademark Trial and Appeal Board, said person may, unless appeal has been taken to said Court of Customs and Patent Appeals, have remedy by a civil action if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints or as provided in section 21(a). The court may adjudge that an applicant is entitled to a registration upon the application involved, that a registration involved should be canceled, or such other matter as the issues in the proceeding require, as the facts in the case may appear. Such adjudication shall authorize the Commissioner to take any necessary action, upon compliance with the requirements of law.

(2) The Commissioner shall not be made a party to an *inter partes* proceeding under this subsection, but he shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall have the right to intervene in the action.

(3) In all cases where there is no adverse party, a copy of the complaint shall be served on the Commissioner; and all the expenses of the proceedings shall be paid by the party bringing them, whether the final decision is in his favor or not. In suits brought hereunder, the record in the Patent Office shall be admitted on motion of any party, upon such

terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of any party to take further testimony. The testimony and exhibits of the record in the Patent Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

(4) *Where there is an adverse party, such suit may be instituted against the party in interest as shown by the records of the Patent Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs.*

* * * * *

TITLE II—THE SUPPLEMENTAL REGISTER

SEC. 23. * * *

* * * * *

Upon a proper showing by the applicant that he [has begun the lawful use of his mark in foreign commerce and that he] requires domestic registration as a basis for foreign protection of his mark, the Commissioner may waive the requirement of a full year's use and may grant registration forthwith.

CANCELLATION

SEC. 24. Marks for the supplemental register shall not be published for or be subject to opposition, but shall be published on registration in the Official Gazette of the Patent Office. Whenever any person believes that he is or will be damaged by the registration of a mark on this register he may at any time, *upon payment of the prescribed fee and the filing of a verified petition stating the ground therefor*, apply to the Commissioner to cancel such registration. The Commissioner shall refer such application to the Trademark Trial and Appeal Board *which shall give notice thereof to the registrant*. If it is found after a hearing before the Board that the registrant was not entitled to register the mark at the time of his application for registration thereof, or that the mark is not used by the registrant or has been abandoned, the registration shall be canceled by the Commissioner.

* * * * *

TITLE III—NOTICE OF REGISTRATION

SEC. 29. Notwithstanding the provisions of section 22 hereof, a registrant of a mark registered [under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register established by this Act shall] *in the Patent Office may give notice that his mark is registered by displaying with the mark as used the words "Registered in U.S. Patent Office" or "Reg. U.S. Pat. Off." of the letter R enclosed with a circle, thus ®; and in any suit for infringement under this Act*

by such a registrant failing [so to mark goods bearing the registered mark or by a registrant under the Act of March 19, 1920, or by the registrant of a mark on the supplemental register provided by this Act] *to give such notice of registration*, no profits and no damages shall be recovered under the provisions of this Act unless defendant had actual notice of the registration.

TITLE IV—CLASSIFICATION

SEC. 30. The Commissioner [shall] may establish a classification of goods and services, for convenience of Patent Office administration, but not to limit or extend the applicant's rights. [The applicant may register his mark in one application for any or all of the goods or services included in one class, upon or in connection with which he is actually using the mark. The Commissioner may issue a single certificate for one mark registered in a plurality of classes upon payment of a fee equaling the sum of the fees for each registration in each class.] *The applicant may file an application to register a mark for any or all of the goods and services upon or in connection with which he is actually using the mark: Provided, That when such goods or services fall within a plurality of classes, a fee equaling the sum of the fees for filing an application in each class shall be paid, and the Commissioner may issue a single certificate of registration for such mark.*

* * * * *

TITLE VI—REMEDIES

SEC. 32. (1) [Any person who shall, in commerce, (a) use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of any registered mark in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers as to the source of origin of such goods or services; or (b) reproduce, counterfeit, copy, or colorably imitate any such mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale in commerce of such goods or services, shall be liable to a civil action by the registrant for any or all of the remedies hereinafter provided, except that under subsection (b) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive purchasers.] Any person who shall, without the consent of the registrant—

(a) *Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or*

(b) *Reproduce, counterfeit, copy or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising*

of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) hereof, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

(2) Notwithstanding any other provision of this Act, the remedies given to the owner of the right infringed shall be limited as follows:

* * * * *

(b) where the infringement complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical the remedies of the owner of the right infringed as against the [published] publisher or distributor of such newspaper, magazine, or other similar periodical shall be confined to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodical:

* * * * *

SEC. 33. (a) Any [certificate of] registration issued under the Act of March 3, 1881, or the Act of February 20, 1905, or of a mark registered on the principal register provided by this Act and owned by a party to an action shall be admissible in evidence and shall be prima facie evidence of registrant's exclusive right to use the registered mark in commerce on the goods or services specified in the [certificate] registration subject to any conditions or limitations stated therein, but shall not preclude an opposing party from proving any legal or equitable defense or defect which might have been asserted if such mark had not been registered.

(b) If the right to use the registered mark has become incontestable under section 15 hereof, the [certificate] registration shall be conclusive evidence of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the [certificate] affidavit filed under the provisions of said section. 15 subject to any conditions or limitations stated therein except when one of the following defenses or defects is established:

* * * * *

(3) That the registered mark [has been assigned and] is being used, by or with the permission of the [assignee] registrant or a person in privity with the registrant, so as to misrepresent the source of the goods or services in connection with which the mark is used; or

* * * * *

(5) That the mark whose use by a party is charged as an infringement was adopted without knowledge of the registrant's prior use and has been continuously used by such party or those in privity with him from a date prior to [the] registration of the mark under this Act or publication of the registered mark under subsection [(a) or] (c) of section 12 of this Act: *Provided, however,* That this defense or defect shall apply only for the area in which such continuous prior use is proved; or

(6) That the mark whose use is charged as an infringement was registered and used prior to the registration under this Act or

publication under subsection [(a) or] (c) of section 12 of this Act of the registered mark of the registrant, and not abandoned: *Provided, however,* That this defense or defect shall apply [only where the said mark has been published pursuant to subsection (e) of section 12 and shall apply] only for the area in which the mark was used prior to [the date of] *such registration or such publication* of the registrant's mark [under subsection (a) or (c) of section 12 of this Act]; or

* * * * *

SEC. 35. When a violation of any right of the registrant of a mark registered in the Patent Office shall have been established in any civil action arising under this Act, the plaintiff shall be entitled, subject to the provisions of sections 29 and [31(1)(b)] 32, and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action.

* * * * *

TITLE IX—INTERNATIONAL CONVENTIONS

* * * * *

SEC. 44 (b).

[Persons who are nationals of, domiciled in, or have a bona fide and effective business or commercial establishment in any foreign country, which is a party to (1) the International Convention for the Protection of Industrial Property, signed at Paris on March 20, 1883, or (2) the General Inter-American Convention for Trade-Mark and Commercial Protection signed at Washington on February 20, 1929, or (3) any other convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition to which the United States is a party, shall be entitled to the benefits and subject to the provisions of this Act to the extent and under the conditions essential to give effect to any such conventions and treaties so long as the United States shall continue to be a party thereto, except as provided in the following paragraphs of this section.]

Any person whose country of origin is a party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which the United States is also a party, or extends reciprocal rights to nationals of the United States by law, shall be entitled to the benefits of this section under the conditions expressed herein to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of a mark is otherwise entitled by this Act.

* * * * *

(e) A mark duly registered in the country of origin of the foreign applicant may be registered on the principal register if eligible, otherwise on the supplemental register herein provided. The application therefor shall be accompanied by a *certification or a certified copy* of the [application for or] registration in the country of origin of the applicant.

* * * * *

TITLE X—CONSTRUCTION AND DEFINITIONS

SEC. 45. In the construction of this Act, unless the contrary is plainly apparent from the context—

* * * * *

The terms “applicant” and “registrant” embrace the legal representatives, *predecessors*, and successors and assigns of such applicant or registrant.

* * * * *

The terms “trade name” and “commercial name” include individual names and surnames, firm names and trade names used by manufacturers, industrialists, merchants, agriculturalists, and others to identify their businesses, vocations, or occupations; the names or titles lawfully adopted and used by persons, firms, associations, corporations, companies, unions, and any manufacturing, industrial, commercial, agricultural, or other organization engaged in trade or commerce and capable of suing and being sued in a court of law.

* * * * *

[The term “service mark” means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising used in commerce.]

The term “service mark” means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

* * * * *

For the purposes of this Act a mark shall be deemed to be used in commerce (a) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and the goods are sold or transported in commerce and (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce[.], *or the services are rendered in more than one State or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith.*

* * * * *

The [terms] term “colorable imitation” includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive [purchasers].

* * * * *

The intent of this Act is to regulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce; to protect registered marks used in such [commerce] commerce from interference by State, or territorial legislation; to protect persons engaged in such commerce against

unfair competition; to prevent fraud and deception in such commerce by the use of reproductions, copies, counterfeits, or colorable imitations of registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trademarks, trade names, and unfair competition entered into between the United States and foreign nations.

* * * * *



Calendar No. 2073

87TH CONGRESS
2^D SESSION

H. R. 4333

[Report No. 2107]

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19 (legislative day, SEPTEMBER 16), 1961

Read twice and referred to the Committee on the Judiciary

SEPTEMBER 18, 1962

Reported by Mr. McCLELLAN, without amendment.

AN ACT

To amend the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946, as amended.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That paragraph (1) of subsection (a) of section 1 of the
4 Act entitled "An Act to provide for the registration and
5 protection of trademarks used in commerce, to carry out the
6 provisions of certain international conventions, and for other
7 purposes", approved July 5, 1946 (60 Stat. 427), as
8 amended, is amended by striking the words "as might be
9 calculated to deceive" and inserting in lieu thereof "as to

1 be likely, when applied to the goods of such other person, to
2 cause confusion, or to cause mistake, or to deceive"; and
3 by striking the words "or services" from the proviso thereof.

4 SEC. 2. Subsection (d) of section 2 is amended by
5 striking the language beginning with the word "confusion",
6 first appearance, and ending with the word "herewith" at
7 the end of said subsection and inserting in lieu thereof the
8 following: "confusion, or to cause mistake, or to deceive:
9 *Provided*, That when the Commissioner determines that
10 confusion, mistake, or deception is not likely to result from
11 the continued use by more than one person of the same
12 or similar marks under conditions and limitations as to the
13 mode or place of use of the marks or the goods in connec-
14 tion with which such marks are used, concurrent registrations
15 may be issued to such persons when they have become
16 entitled to use such marks as a result of their concurrent
17 lawful use in commerce prior to (i) the earliest of the
18 filing dates of the applications pending or of any registra-
19 tion issued under this Act; or (ii) July 5, 1947, in the case
20 of registrations previously issued under the Act of March 3,
21 1881, or February 20, 1905, and continuing in full force and
22 effect on that date; or (iii) July 5, 1947, in the case of
23 applications filed under the Act of February 20, 1905, and
24 registered after July 5, 1947. Concurrent registrations may

also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods in connection with which such mark is registered to the respective persons."

SEC. 3. Section 6 is amended by striking the entire section and inserting in lieu thereof the following:

"SEC. 6. (a) The Commissioner may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

"(b) No disclaimer, including those made under paragraph (d) of section 7 of this Act, shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services."

SEC. 4. The first sentence of subsection (a) of section 7 is amended by striking therefrom the word "either"; by striking the words "name printed" and inserting in lieu thereof the words "signature placed"; by striking the words

1 “and attested by an assistant commissioner or by one of the
2 law examiners duly designated by the Commissioner,” and
3 by striking the words “and a record thereof, together with
4 printed copies of the drawing and statement of the appli-
5 cant, shall be kept in books for that purpose” and inserting
6 in lieu thereof the words “, and a record thereof shall be
7 kept in the Patent Office.” The second sentence of subsec-
8 tion (a) of section 7 is amended by striking therefrom the
9 word “certificate” and inserting the word “registration” in
10 lieu thereof; by striking therefrom the words “the drawing
11 of”; and by striking the words “the grant of”.

12 Subsection (d) of section 7 is amended by striking the
13 entire subsection and inserting in lieu thereof the following:
14 “Upon application of the registrant the Commissioner may
15 permit any registration to be surrendered for cancelation,
16 and upon cancelation appropriate entry shall be made in
17 the records of the Patent Office. Upon application of the
18 registrant and payment of the prescribed fee, the Com-
19 missioner for good cause may permit any registration to
20 be amended or to be disclaimed in part: *Provided*, That
21 the amendment or disclaimer does not alter materially the
22 character of the mark. Appropriate entry shall be made
23 in the records of the Patent Office and upon the certificate

1 of registration or, if said certificate is lost or destroyed,
2 upon a certified copy thereof.”

3 Subsection (e) of section 7 is amended by striking the
4 words “certificates of”; by adding an “s” to the word “regis-
5 tration”; and striking the words “a chief of division” and
6 inserting in lieu thereof “an employee of the Office”.

7 Subsection (f) of section 7 is amended by striking from
8 the first sentence the words “, signed by the Commissioner
9 and sealed with the seal of the Patent Office”; by striking
10 the word “certificate”, second occurrence; and by striking
11 the word “certificate”, third occurrence, and inserting the
12 word “registration” in lieu thereof.

13 SEC. 5. Section 9 is amended by striking the entire
14 section and inserting in lieu thereof the following:

15 “SEC. 9. (a) Each registration may be renewed for
16 periods of twenty years from the end of the expiring period
17 upon payment of the prescribed fee and the filing of a veri-
18 fied application therefor, setting forth those goods or services
19 recited in the registration on or in connection with which
20 the mark is still in use in commerce and having attached
21 thereto a specimen or facsimile showing current use of
22 the mark, or showing that any nonuse is due to special cir-
23 cumstances which excuse such nonuse and it is not due to any

1 intention to abandon the mark. Such application may be
2 made at any time within six months before the expiration of
3 the period for which the registration was issued or renewed,
4 or it may be made within three months after such expiration
5 on payment of the additional fee herein prescribed.

6 “(b) If the Commissioner refuses to renew the regis-
7 tration, he shall notify the registrant of his refusal and the
8 reasons therefor.

9 “(c) An applicant for renewal not domiciled in the
10 United States shall be subject to and comply with the pro-
11 visions of section 1 (d) hereof.”

12 SEC. 6. Section 10 is amended by changing the colon
13 following the word “conducted” to a period and striking the
14 words “*Provided, That* any assigned registration may be
15 canceled at any time if the registered mark is being used by,
16 or with the permission of, the assignee so as to misrepresent
17 the source of the goods or services in connection with which
18 the mark is used”; and striking the sentence “The Commis-
19 sioner shall keep a separate record of such assignments sub-
20 mitted to him for recording.” and inserting in lieu thereof
21 “A separate record of assignments submitted for recording
22 hereunder shall be maintained in the Patent Office.”

23 SEC. 7. Subsection (a) of section 12 is amended by
24 changing the period at the end thereof to a colon and insert-
25 ing after the colon the following: “*Provided, That* in the case

1 of an applicant claiming concurrent use, or in the case of an
2 application to be placed in an interference as provided for in
3 section 16 of this Act, the mark, if otherwise registrable,
4 may be published subject to the determination of the rights
5 of the parties to such proceedings.”

6 Subsection (c) of section 12 is amended by striking
7 therefrom the first word of the last sentence and inserting in
8 lieu thereof the words “Marks published under this”.

9 SEC. 8. Section 13 is amended by striking the words
10 “notice of” each occurrence, and by adding at the end thereof
11 the following sentence: “An opposition may be amended
12 under such conditions as may be prescribed by the Com-
13 missioner.”

14 SEC. 9. Section 14 is amended by striking said section
15 in its entirety and inserting in lieu thereof the following:

16 “SEC. 14. A verified petition to cancel a registration of
17 a mark, stating the grounds relied upon, may, upon payment
18 of the prescribed fee, be filed by any person who believes
19 that he is or will be damaged by the registration of a mark
20 on the principal register established by this Act, or under the
21 Act of March 3, 1881, or the Act of February 20, 1905—

22 “(a) within five years from the date of the regis-
23 tration of the mark under this Act; or

24 “(b) within five years from the date of publica-
25 tion under section 12 (c) hereof of a mark registered

1 under the Act of March 3, 1881, or the Act of February
2 20, 1905; or

3 “(c) at any time if the registered mark becomes
4 the common descriptive name of an article or substance,
5 or has been abandoned, or its registration was obtained
6 fraudulently or contrary to the provisions of section 4
7 or of subsections (a), (b), or (c) of section 2 of this
8 Act for a registration hereunder, or contrary to similar
9 prohibitory provisions of said prior Acts for a registra-
10 tion thereunder, or if the registered mark is being used
11 by, or with the permission of, the registrant so as to
12 misrepresent the source of the goods or services in con-
13 nection with which the mark is used; or

14 “(d) at any time if the mark is registered under
15 the Act of March 3, 1881, or the Act of February 20,
16 1905, and has not been published under the provisions
17 of subsection (c) of section 12 of this Act; or

18 “(e) at any time in the case of a certification mark
19 on the ground that the registrant (1) does not control,
20 or is not able legitimately to exercise control over, the
21 use of such mark, or (2) engages in the production or
22 marketing of any goods or services to which the certi-
23 fication mark is applied, or (3) permits the use of the
24 certification mark for purposes other than to certify, or
25 (4) discriminately refuses to certify or to continue to

1 certify the goods or services of any person who main-
2 tains the standards or conditions which such mark
3 certifies:

4 *“Provided, That the Federal Trade Commission may apply*
5 *to cancel on the grounds specified in subsections (c) and (e)*
6 *of this section any mark registered on the principal register*
7 *established by this Act, and the prescribed fee shall not be*
8 *required.”*

9 SEC. 10. Section 15 is amended by striking “(c) and
10 (d)” in the first paragraph and inserting in lieu thereof the
11 following: “(c) and (e)”.

12 Section 15 is amended by striking “or trade name” from
13 paragraph numbered (4).

14 SEC. 11. Section 16 is amended by striking therefrom
15 the word “purchasers”.

16 SEC. 12. Section 21 is amended by striking the entire
17 section, and inserting in lieu thereof the following:

18 “SEC. 21. (a) (1) An applicant for registration of a
19 mark, party to an interference proceeding, party to an op-
20 position proceeding, party to an application to register as a
21 lawful concurrent user, party to a cancellation proceeding,
22 a registrant who has filed an affidavit as provided in section
23 8, or an applicant for renewal, who is dissatisfied with the
24 decision of the Commissioner or Trademark Trial and Ap-

1 appeal Board, may appeal to the United States Court of Cus-
2 toms and Patent Appeals thereby waiving his right to
3 proceed under section 21 (b) hereof: *Provided*, That such
4 appeal shall be dismissed if any adverse party to the pro-
5 ceeding, other than the Commissioner, shall, within twenty
6 days after the appellant has filed notice of appeal according
7 to section 21 (a) (2) hereof, files notice with the Commis-
8 sioner that he elects to have all further proceedings con-
9 ducted as provided in section 21 (b) hereof. Thereupon
10 the appellant shall have thirty days thereafter within which
11 to file a civil action under said section 21 (b), in default of
12 which the decision appealed from shall govern the further
13 proceedings in the case.

14 “(2) When an appeal is taken to the United States
15 Court of Customs and Patent Appeals, the appellant shall
16 give notice thereof to the Commissioner, and shall file in
17 the Patent Office his reasons of appeal, specifically set forth
18 in writing, within such time after the date of the decision
19 appealed from, not less than sixty days, as the Commissioner
20 appoints.

21 “(3) The court shall, before hearing such appeal, give
22 notice of the time and place of the hearing to the Commis-
23 sioner and the parties thereto. The Commissioner shall
24 transmit to the court certified copies of all the necessary
25 original papers and evidence in the case specified by the

1 appellant and any additional papers and evidence specified
2 by the appellee, and in an ex parte case the Commissioner
3 shall furnish the court with the grounds of the decision of
4 the Patent Office, in writing, touching all the points involved
5 by the reasons of appeal.

6 “(4) The court shall hear and determine such appeal
7 on the evidence produced before the Patent Office, and the
8 decision shall be confined to the points set forth in the
9 reasons of appeal. Upon its determination, the court shall
10 return to the Commissioner a certificate of its proceedings
11 and decision, which shall be entered of record in the Patent
12 Office and govern the further proceedings in the case.

13 “(b) (1) Whenever a person authorized by section 21
14 (a) hereof to appeal to the United States Court of Customs
15 and Patent Appeals is dissatisfied with the decision of the
16 Commissioner or Trademark Trial and Appeal Board, said
17 person may, unless appeal has been taken to said Court of
18 Customs and Patent Appeals, have remedy by a civil action
19 if commenced within such time after such decision, not less
20 than sixty days, as the Commissioner appoints or as provided
21 in section 21 (a). The court may adjudge that an applicant
22 is entitled to a registration upon the application involved,
23 that a registration involved should be canceled, or such other
24 matter as the issues in the proceeding require, as the facts in
25 the case may appear. Such adjudication shall authorize the

1 Commissioner to take any necessary action, upon compliance
2 with the requirements of law.

3 “(2) The Commissioner shall not be made a party to an
4 inter partes proceeding under this subsection, but he shall
5 be notified of the filing of the complaint by the clerk of
6 the court in which it is filed and shall have the right to
7 intervene in the action.

8 “(3) In all cases where there is no adverse party, a
9 copy of the complaint shall be served on the Commissioner;
10 and all the expenses of the proceedings shall be paid by
11 the party bringing them, whether the final decision is in
12 his favor or not. In suits brought hereunder, the record in
13 the Patent Office shall be admitted on motion of any party,
14 upon such terms and conditions as to costs, expenses, and
15 the further cross-examination of the witnesses as the court
16 imposes, without prejudice to the right of any party to take
17 further testimony. The testimony and exhibits of the record
18 in the Patent Office, when admitted, shall have the same
19 effect as if originally taken and produced in the suit.

20 “(4) Where there is an adverse party, such suit may
21 be instituted against the party in interest as shown by the
22 records of the Patent Office at the time of the decision com-
23 plained of, but any party in interest may become a party
24 to the action. If there be adverse parties residing in a
25 plurality of districts not embraced within the same State.

1 or an adverse party residing in a foreign country, the United
2 States District Court for the District of Columbia shall have
3 jurisdiction and may issue summons against the adverse
4 parties directed to the marshal of any district in which any
5 adverse party resides. Summons against adverse parties
6 residing in foreign countries may be served by publication
7 or otherwise as the court directs.”

8 SEC. 13. Section 23 is amended by striking from the
9 last paragraph thereof the words “has begun the lawful use
10 of his mark in foreign commerce and that he”.

11 SEC. 14. Section 24 is amended by inserting in the
12 second sentence thereof, following the word “time”, the
13 following: “, upon payment of the prescribed fee and the
14 filing of a verified petition stating the ground therefor,”; and
15 by inserting in the third sentence following the word “Board”
16 the word “which”.

17 SEC. 15. Section 29 is amended by deleting the follow-
18 ing: “under the Act of March 3, 1881, or the Act of Feb-
19 ruary 20, 1905, or on the principal register established by
20 this Act, shall” and inserting in lieu thereof the following:
21 “in the Patent Office, may”; and by deleting “so to mark
22 goods bearing the registered mark, or by a registrant under
23 the Act of March 19, 1920, or by the registrant of a mark
24 on the supplemental register provided by this Act” and in-
25 serting in lieu thereof “to give such notice of registration,”.

1 SEC. 16. Section 30 is amended by striking the word
2 “shall” in the first sentence and inserting in lieu thereof the
3 word “may”; and by striking therefrom all of said section
4 except the first sentence thereof and inserting in lieu thereof
5 the following: “The applicant may file an application to
6 register a mark for any or all of the goods and services upon
7 or in connection with which he is actually using the mark:
8 *Provided*, That when such goods or services fall within a
9 plurality of classes, a fee equaling the sum of the fees for
10 filing an application in each class shall be paid, and the Com-
11 missioner may issue a single certificate of registration for
12 such mark.”

13 SEC. 17. Subsection (1) of section 32 is amended by
14 striking the entire subsection and inserting in lieu thereof
15 the following:

16 “Any person who shall, without the consent of the
17 registrant—

18 “(a) use in commerce any reproduction, counter-
19 feit, copy, or colorable imitation of a registered mark in
20 connection with the sale, offering for sale, distribution, or
21 advertising of any goods or services on or in connection
22 with which such use is likely to cause confusion, or to
23 cause mistake, or to deceive; or

24 “(b) reproduce, counterfeit, copy, or colorably imi-

1 tate a registered mark and apply such reproduction,
2 counterfeit, copy, or colorable imitation to labels, signs,
3 prints, packages, wrappers, receptacles or advertise-
4 ments intended to be used in commerce upon or in con-
5 nection with the sale, offering for sale, distribution, or
6 advertising of goods or services on or in connection with
7 which such use is likely to cause confusion, or to cause
8 mistake, or to deceive.

9 shall be liable in a civil action by the registrant for the
10 remedies hereinafter provided. Under subsection (b) hereof,
11 the registrant shall not be entitled to recover profits or dam-
12 ages unless the acts have been committed with knowledge
13 that such imitation is intended to be used to cause confusion,
14 or to cause mistake, or to deceive.”

15 Paragraph (b) of subsection (2) of section 32 is
16 amended by striking the word “published” and inserting in
17 lieu thereof the word “publisher”.

18 SEC. 18. Subsection (a) of section 33 is amended by
19 striking therefrom the words “certificate of” in the first
20 line, and changing “certificate”, second appearance, to regis-
21 tration”.

22 Subsection (b) of section 33 is amended by striking
23 the word “certificate”, first appearance, and inserting the
24 word “registration” in lieu thereof and by striking therefrom

1 the word "certificate", second appearance, and inserting in
2 lieu thereof "affidavit filed under the provisions of said sec-
3 tion 15".

4 Paragraph (3) of subsection (b) of section 33 is
5 amended by striking therefrom the words "has been assigned
6 and"; and by striking therefrom the word "assignee" and
7 inserting in lieu thereof the words "registrant or a person
8 in privity with the registrant".

9 Paragraph (5) of subsection (b) of section 33 is
10 amended by striking therefrom the word "the" following
11 the words "date prior to" and inserting in lieu thereof the
12 words "registration of the mark under this Act or"; by
13 striking therefrom "(a) or" following the word "subsec-
14 tion"; and by changing the period to "; or".

15 Paragraph (6) of subsection (b) of section 33 is
16 amended by inserting the words "registration under this
17 Act or" after the word "the", second appearance; by
18 striking therefrom "(a) or" following the word "subsec-
19 tion", first appearance; by striking from the proviso the
20 words "only where the said mark has been published pur-
21 suant to subsection (c) of section 12 and shall apply";
22 by striking the words "the date of" following the words
23 "prior to" in said proviso and inserting in lieu thereof "such
24 registration or such"; by striking therefrom the words "under

1 subsection (a) or (c) of section 12 of this Act"; and by
2 changing the period to "; or".

3 SEC. 19. Section 35 is amended by striking "31 (1)
4 (b) " and inserting in lieu thereof "32".

5 SEC. 20. Subsection (b) of section 44 is amended by
6 striking said subsection in its entirety and inserting in lieu
7 thereof the following:

8 "(b) Any person whose country of origin is a party
9 to any convention or treaty relating to trademarks, trade or
10 commercial names, or the repression of unfair competition,
11 to which the United States is also a party, or extends re-
12 ciprocal rights to nationals of the United States by law, shall
13 be entitled to the benefits of this section under the conditions
14 expressed herein to the extent necessary to give effect to any
15 provision of such convention, treaty or reciprocal law, in ad-
16 dition to the rights to which any owner of a mark is other-
17 wise entitled by this Act."

18 Subsection (e) of section 44 is amended by inserting
19 after the word "a" in the second sentence the words "certifi-
20 cation or a"; and by striking from said second sentence the
21 words "application for or".

22 SEC. 21. Section 45 is amended as follows: The sixth
23 paragraph of said section, relating to the definition of "ap-

1 plicant, registrant”, is amended by changing “and”, second
2 appearance, to “, predecessors,”.

3 The ninth paragraph of said section, relating to the
4 meaning of the terms “trade name” and “commercial name”,
5 is amended by inserting a comma between the words “com-
6 mercial” and “agricultural”.

7 The eleventh paragraph of said section, being the defini-
8 tion of “service mark”, is amended by striking the definition
9 in its entirety and inserting in lieu thereof:

10 “The term ‘service mark’ means a mark used in the sale
11 or advertising of services to identify the services of one
12 person and distinguish them from the services of others.
13 Titles, character names and other distinctive features of
14 radio or television programs may be registered as service
15 marks notwithstanding that they, or the programs, may
16 advertise the goods of the sponsor.”

17 The fifteenth paragraph of said section, relating to use
18 in commerce, is amended by changing the period at the end
19 of said paragraph to a comma and adding the words “or
20 the services are rendered in more than one State or in this
21 and a foreign country and the person rendering the services
22 is engaged in commerce in connection therewith.”

23 The seventeenth paragraph of said section, relating to
24 the meaning of the term “colorable imitation”, is amended

1 by changing "terms" to "term" and deleting the word "pur-
2 chasers" at the end thereof.

3 The final paragraph of said section is amended by strik-
4 ing therefrom the word "commence" and inserting in lieu
5 thereof the word "commerce".

Passed the House of Representatives September 18, 1961.

Attest:

RALPH R. ROBERTS,

Clerk.

AN ACT

To amend the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946, as amended.

SEPTEMBER 19 (legislative day, SEPTEMBER 16), 1961
Read twice and referred to the Committee on the
Judiciary

SEPTEMBER 18, 1962
Reported without amendment

Senate
Sept 24, 1962

11. FORESTRY. Sen. Morse inserted his recent speech in which he expressed concern over the effects of timber imports from Canada. pp. 19273-5
The Interior and Insular Affairs Committee reported with amendments S. 2387, to provide for the establishment of the Canyonlands National Park, Utah, (S. Rept. 2121)(p. 19262). Sen. Moss criticized Sen. Bennett for opposing this bill and urged its enactment (p. 19323).
12. TRANSPORTATION. Passed with amendments H. R. 11586, to amend the Merchant Marine Act so as to make permanent a temporary increase in the maximum construction differential subsidy that may be paid under the act (pp. 19288, 19291-2). Agreed to an amendment by Sen. Neuberger to amend the Jones Act so as to eliminate a provision which prohibits the shipment of lumber from the U. S. to Puerto Rico in other than American vessels (pp. 19291-2).
13. D. C. APPROPRIATION BILL, 1963. A subcommittee of the Appropriations Committee approved for full committee consideration with amendments this bill, H. R. 12276. p. D882
14. WATERSHEDS. A subcommittee of the Agriculture and Forestry Committee approved for full committee consideration the following watershed projects: Crooked Bayou, Ark.; West Fork Pond River, Ky.; and Hardin Creek and Mill Creek, Tenn. p. D882
15. TRADEMARKS. Passed without amendment H. R. 4333, to amend the Trademark Act so as to clarify certain ambiguities relating to the registration and protection of trademarks. This bill will now be sent to the President. pp. 19319-21.
16. PATENTS. The "Daily Digest" states that the Subcommittee on Patents, Trademarks, and Copyrights of the Judiciary Committee "announced that it had approved for full committee consideration with amendments S. 2225, to fix the fees payable to the Patent Office; S. 2639, relating to the oath of applicant for patent, and verification by the applicant of application for trademark registration; and H. R. 12513, to provide for public notice of settlements in patent interferences." p. D833
17. VIRGIN ISLANDS. Concurred in the House amendments to S. 2429, to revise the boundaries of the Virgin Islands National Park, St. John, Virgin Islands. This bill will now be sent to the President. pp. 19313-4
18. FOREIGN AFFAIRS. Sen. Morse inserted a chronology prepared by State Department on U. S. relations with Cuba from 1957 to 1962. pp. 19326-31
19. PROPERTY. Sen. Morse discussed the application of the "Morse formula" to legislation relating to the disposition of surplus Federal property and inserted a compilation of all legislation from the 80th through the 86th Congress to which the formula would apply. pp. 19331-49
20. FOREIGN TRADE. Sen. Proxmire suggested that a proviso be added to the foreign aid bill to deny aid to countries which do not cooperate with the U. S. in its embargo on trade with Cuba. pp. 19349-51

ITEMS IN APPENDIX

21. TRANSPORTATION. Extension of remarks of Sen. Kefauver inserting an address, "Railroad Mergers and Monopoly." pp. A7032-5

Extension of remarks of Rep. Berry inserting correspondence from sugarbeet farmers in several states demanding settlement of the C. & N. W. Railway strike before their 1962 crop is ruined. p. A7035

22. CONSERVATION. Extension of remarks of Rep. Younger inserting an editorial criticizing the National Association of Soil and Water Conservation Districts. p. A7036

Extension of remarks of Sen. Wiley inserting his address outlining an 11-point conservation program. pp. A7036-7

23. EXPENDITURES. Extension of remarks of Rep. Goodling inserting a letter criticizing the Secretary of HEW for sending a telegram to Representatives. p. A7039

24. ASC COMMITTEES. Extension of remarks of Rep. Jensen commending the ASC committeemen saying, "these farmer-citizen committees have served in the high tradition of civic endeavor." p. A7042

Extension of remarks of Rep. Randall paying tribute to the ASC committeemen saying, "It is a privilege to salute you, our country ASC committeemen." pp. A7052-3

25. LUMBER INDUSTRY. Extension of remarks of Rep. Hansen defending this Department the Forest Service, and the Administration with regard to the problems of the lumber industry. pp. A7055-7

26. FOREIGN AID. Extension of remarks of Rep. Alger inserting a statement criticizing the foreign aid program. pp. A7064-5

BILLS INTRODUCED

27. NATIONAL PARK. S. 3744, by Sen. Bennett, to authorize the establishment of the Canyonlands National Park and Recreation Area; to Interior and Insular Affairs. Remarks of author, pp. 19263-5

28. MARKETING. S. 3745, by Sen. Hart, to amend the Clayton Act to prohibit restraints of trade carried into effect through the use of unfair and deceptive methods of packaging and labeling certain consumer commodities distributed in commerce; to Judiciary Committee. Remarks of author pp. 19265-9

29. APPROPRIATIONS. S. Con Res 94, by Sen. Clark, to amend section 133 of the Legislative Reorganization Act of 1946, relative to procedure on appropriation bills; to Rules and Administration Committee.

30. LEGISLATIVE PROPOSAL. S. Res. 400, by Sen. Clark, to express sense of Senate on standing committees reporting by July 4 of any year on each legislative proposal by the executive branch of government; to Rules and Administration Committee. Remarks of author, p. 19305

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COMMITTEE HEARINGS SEPT. 25:

Administration's transportation bills, S. Commerce.

Watershed projects, H. Agriculture (exec).

Tax bill, conferees (exec).

Food and Drug Act amendments, H. Rules.

The act as presently drawn would permit foreign corporations taking property by foreclosure, sale, or lay agreement in lieu thereof, to hold and operate such property for a reasonable time, pending liquidation of its investment, without incurring any District tax liability. As the Commissioners pointed out in their previous report, they believe that the phrase "reasonable time" is so indefinite that enforcement of this provision would be extremely difficult, if not impossible. The Commissioners are of the view that, in the event the act receives favorable consideration, the acquiring corporation should be allowed to operate, maintain, rent, sell, or dispose of such property without tax liability only during the time, not to exceed 90 days, that the corporation is actively engaged in liquidating its investment in such property and only if liquidation is completed within 90 days after the acquisition.

The Commissioners are also of the view that the act should contain a provision to the effect that the tax relief afforded by the act will be granted only to foreign corporations of States which grant similar privileges to District of Columbia corporations.

In addition, the Commissioners recommend that the act contain a provision to the effect that income derived by a foreign lending corporation in the District will be excludable from gross income only if such income is subject to tax and is reported to and taxed by either the State or other jurisdiction in which the foreign corporation is incorporated, or the State or other jurisdiction where it has its principal places of business.

Finally, the Commissioners recommended that foreign corporations, as a condition for exclusion of gross income, be required to report to the Commissioners the income claimed to be excludable, together with a report of the activities of such corporations within the District. Language to accomplish the changes recommended by the Commissioners is attached.

Time does not permit securing the views of the Bureau of the Budget as to the relationship of this legislation to the program of the President.

Sincerely,

President, Board of Commissioners, District of Columbia.

REGISTRATION AND PROTECTION OF TRADEMARKS USED IN COMMERCE

The bill (H.R. 4333) to amend the act entitled "An act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes," approved July 5, 1946, as amended was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 2107), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of this legislation is to make a number of miscellaneous changes in the Trademark Act of 1946 so as to clarify the meaning of several of its provisions. The provisions of the bill affect details of registration, administrative and court procedure, internal organization of the Patent Office regarding trademark matters, and refinements in language that experience has shown to be

desirable. It also corrects typographical errors in the Trademark Act of 1946.

STATEMENT

The facts and legislative history regarding this legislation are contained in House Report 1108, and are as follows:

Views of Government agencies and interested private organizations

"The Department of Justice, in its report dated August 14, 1961, states that the subject of the legislation is not a matter as to which the Department of Justice has primary responsibility, and accordingly makes no recommendation as to the enactment of the bill.

"The Department of Commerce, in a report dated August 15, 1961, recommends enactment of the bill with certain technical and clarifying amendments.

"The Department of State, in a report dated September 2, 1959, on a predecessor bill, perceived no objection to the enactment of this legislation, and in fact, expressed its support for section 20 thereof as it concerns the applicability of the act to nationals of foreign countries.

"The Treasury Department, in its report of August 14, 1959, on a predecessor bill, stated that it had no recommendations to make because the proposed legislation related to matters primarily within the jurisdiction of the Department of Commerce.

"The Federal Trade Commission, in its report on the instant bill, dated August 11, 1961, suggests that the jurisdiction of the Commission be expanded to permit it to file petitions for cancellation of registered marks which become, prior or subsequent to registration, the common descriptive name of an article or substance. This would include registrations issued under the Trademark Acts of 1881 and of 1905 as well as registrations issued under the Principal Register established under the Trademark Act of 1946. The committee does not think it appropriate to consider charges of this nature at this time, since the instant bill is in large part a housekeeping measure, making minimal substantive changes in the trademark law. The Federal Trade Commission's suggestions, on the other hand, would bring about a substantive change in policy. In addition, the committee has been advised that there is no present need for this particular change.

"The Federal Trade Commission also objected to the proposed change in the definition of 'service marks' appearing in section 45 of the Trademark Act. The committee, however, feels that the proposed change should be adopted, as it does nothing more than codify the present practice of the Patent Office in this regard.

"The instant bill has the approval and support of the U.S. Trademark Association, the American Bar Association, the National Association of Manufacturers, the District of Columbia Bar Association, the Philadelphia Bar Association, the New York County Lawyers Association, and the bar of the city of New York.

Legislative history

"Similar legislation passed the Senate in the 83d Congress and again in the 86th Congress. However, the House took no action on each occasion.

"Hearings were held on predecessor bills on March 25, 1954. In addition, your committee held hearings on the instant bill on August 16, 1961.

"It might be well to relate some of the history of the trademark laws of the United States which led up to the instant legislation. On July 5, 1946, the trademark laws of the United States were revised by Public Law 489, 79th Congress (ch. 540, 2d sess., 60 Stat. 427), known as the Lanham Trademark Act. It became effective on July 5, 1947, 1 year after its enactment, and completely rewrote the trademark laws of the United States and

made a large number of substantial changes. During the period (about 14 years) that this act has been in operation the need of some revision has become evident.

"In 1948 representatives of some 26 legal and trade associations concerned with trademark matters were formed into a committee to study and recommend what changes in the Trademark Act could be agreed upon as necessary or desirable. As a result thereof, S. 1957 of the 82d Congress, incorporating proposed changes in the trademark laws as recommended by this committee, was introduced. That bill was the subject of considerable study and of further suggestions from individuals, associations, and Government departments. On July 31, 1953, a bill representing many of such suggestions was introduced in the 83d Congress. This bill S. 2540. As stated, that bill was the subject of hearings; amendments were made, and a bill as an amendment in the nature of a substitute was drafted. The hearings were held on March 25, 1954, and representatives of interested associations recommended enactment of the legislation. The various Government departments interested in the subject matter of the bill submitted reports of their views. The bill was then favorably reported on August 5, 1954, and was passed by the Senate on August 11, 1954, but was not acted upon by the House of Representatives prior to adjournment.

"Again, in the 84th Congress, a bill was introduced which was in the wording of S. 2540, being S. 215 of the 84th Congress, but no action was taken thereon. In the 86th Congress a bill (S. 2429) similar to the previous bills but not covering all of the features contained in the prior legislation, passed the Senate. This bill has been termed as a 'housekeeping' bill and was considered to be not controversial. The various departments of Government had, with the exception of certain technical amendments, no objection to this legislation.

"Hearings were held on the instant bill (H.R. 4333) on August 16, 1961. The bill makes numerous amendments to the Trademark Act of 1946. They are set forth later in this report under a heading entitled 'Analysis of Legislation.' Some of the amendments merely correct typographical errors which appeared in the 1946 act; some involve matters of clarification of meaning, and some make desirable changes in substance as well as in details of procedure.

Analysis of legislation

"An analysis of the provisions of H.R. 4333 follows:

"Section 1 of the bill proposes to amend, in several respects, section 1(a)(1) of the act, which relates to the statements required of an applicant for registration of a trademark.

"The first amendment proposes to amend the phrase which now reads: 'that no other person, * * * has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive' by canceling the italicized words and substituting—'as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive. The purpose of this amendment is to make the required allegation of the applicant more nearly complete and more accurate.

"The second amendment is the cancellation of the words 'or services', which appear in the proviso to section a(a)(1). This is for uniformity of drafting and does not affect the meaning.

"Section 2 of the bill proposes to make a number of changes in section 2 of the act.

"The first clause of section 2(d) of the act provides that a mark is to be refused registration if it so resembles a mark registered in the Patent Office or a mark previously used by another, as to be likely when applied to the goods of the applicant, 'to cause con-

fusion or mistake or to deceive purchasers.' The bill proposes to revise the quoted expression to read 'to cause confusion, or to cause mistake, or to deceive.' The purpose of the proposed change is to coordinate the language here with that used elsewhere and to omit the word 'purchasers,' since the provision actually relates to potential purchasers as well as to actual purchasers. The word 'purchasers' is eliminated so as to avoid the possibility of misconstruction of the present language of the statute.

"Section 2(d) of the act contains a long proviso relating to so-called concurrent registrations of trademarks. The bill, as amended, proposes to rewrite this proviso, amending it in a number of respects. The principal amendment is to enlarge the limiting dates after which rights to concurrent registrations cannot accrue. The amendment will increase the possibility of a concurrent registration insofar as the dates involved are concerned.

"The act now states that concurrent registrations are to be granted when confusion or mistake or deceit of purchasers is not likely to result from the continued use of the marks—'under conditions and limitations as to the mode or place of use or the goods in connection with which such registrations may be granted.' There is considerable confusion in the interpretation of this language, which is far from clear. The bill proposes to amend the particular phrase to read: 'under conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, * * *.' This language is much clearer than the original language.

"A few simplifications over the language of the present proviso additionally are made.

"Section 3 of the bill proposes to rewrite section 6 of the act relating to disclaimers.

"Section 4 of the bill would revise section 7(a) of the act relating to the formalities of issuing a registration. The proposed language is simpler than the present wording of the statute and would enable the Patent Office to effect economies in printing the registrations.

"Section 4 of the bill would also rewrite section 7(d) of the act, effecting considerable clarification and at the same time making several changes. First, the requirement for a fee in connection with the voluntary surrender or cancellation of a registration by the registrant is removed. Such surrenders or voluntary cancellations are very rare and the fee may have deterred others which would have been made. Second, it is proposed to omit the words 'in whole or' from the clause in the present section which now states that the Commissioner may 'permit any registered mark to be disclaimed *in whole or in part*.' The italicized words are not seen to be necessary.

"Section 4 of the bill would further make certain language changes in section 7(e) of the act to provide consistency throughout the act and would desirably provide for any duly designated employee, rather than only a chief of a division, to certify copies of Patent Office records.

"Section 4 of the bill would eliminate the present requirements in section 7(f) of the act that the Commissioner sign all certificates of correction, and would make certain language changes to provide consistency throughout the act.

"Section 5 of the bill proposes to amend section 9 of the act relating to the renewal of trademark registrations. The act now requires the registrant, prior to renewal, to file an affidavit stating that the mark is still in use in commerce. The proposed change permits the registrant to obtain the renewal of the registration even if the mark is then being used, provided that the nonuse is due to special circumstances which excuse the nonuse and is not due to any intention to abandon the mark.

"The affidavit now required by this section of the act must state that the mark is in use in commerce, but there is no requirement that the affidavit specify the goods on which the mark is used. Since the proposed amendment provides for an excuse for nonuse due to special circumstances, the amendment also provides that the affidavit (verified application) must set forth those goods recited in the registration on which said mark is still in use in commerce. There must also be attached a specimen or facsimile showing current use of the mark. These additional provisions are particularly desirable. Renewals are extensions of the registrations for 20 years, and the Patent Office records should reflect the goods on which the marks are then being used.

"Section 6 of the bill proposes to amend section 10 of the act by cancelling the following proviso:

"*Provided*, That any assigned registration may be canceled at any time if the registered mark is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used."

"The purpose in canceling this proviso is to incorporate it in broader form, as a requirement applying to any registrant, in section 14, which is a more appropriate part of the act.

"The bill would also revise the language of the sentence dealing with records of assignment, but there is no change in substance proposed.

"Section 7 of the bill proposes to amend section 12(a) of the act by adding the following proviso:

"*Provided*, That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference as provided for in section 16 of this Act, the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings."

"The purpose of this addition is to effect a minor simplification in the Patent Office procedure.

"Section 7 of the bill would also revise and clarify the last sentence of subsection (c) of section 12.

"Section 8 of the bill would add a sentence to section 13 of the act to permit an opposition to be amended, and it would strike the words 'notice of', each occurrence, thereby making the section refer to 'opposition' rather than 'notice of opposition.'

"Section 14(c) of the act provides, as one of the grounds for canceling a registration at any time—if the registered mark becomes the common descriptive name of an article or substance on which the patent has expired—the amendment in the bill cancels the words—'on which the patent has expired.' Section 14(c) of the act also provides as a ground for cancellation at any time—if the registered mark has been assigned and is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used.' This language is replaced by the following broader language of the bill: 'if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used.'

"Section 10 of the bill would make a change in section 15 of the act required by the revision and relettering of paragraphs in section 14.

"Section 10 of the bill also proposes to amend section 15 of the act by canceling from item 4 the italicized words in the following quotation:

"(4) no incontestable right shall be acquired in a mark or *trade name* which is the common descriptive name of any article or substance."

"The italicized words should be canceled since trade names, as such are not registered.

"Section 11 of the bill proposes a change in section 16 of the act corresponding to a change made in section 2(d).

"Section 12 of the bill proposes to rewrite completely section 21 of the act dealing with appeals to the U.S. Court of Customs and Patent Appeals and other judicial review of Patent Office decisions. The act now incorporates by reference the procedure of appeals to the Court of Customs and Patent Appeals and review by civil action in patent cases. The proposed amendment incorporates, with necessary changes in language, the various provisions of title 35 relating to such appeals and review.

"Section 23 of the act, referred to in section 13 of the act, requires that in order for a mark to be eligible for registration on the Supplemental Register it must have been in lawful use for the year preceding the filing of the application. However, this section further provides that where an applicant required domestic registration as a basis for foreign protection of his mark, upon a proper showing that he has begun the lawful use of his mark in foreign commerce, the Commissioner may waive the requirement for a full year's use and may grant registration forthwith. Section 13 of the bill proposes to amend section 23 of the act to eliminate the requirement that the mark be in use in foreign commerce before the Commissioner can waive the requirement for a full year's use in order to be eligible for registration. This proposal does not eliminate the fundamental requirement that the mark actually be in use before it can be registered. The section as amended merely provides for waiving the length of time of use.

"Section 14 of the bill proposes to amend section 24 of the act by adding the phrase: ', upon payment of the prescribed fee and the filing of a verified petition stating the ground therefor,' in order to make the language corresponding to that used in the amendment to section 14 of the act.

"Section 15 of the bill would clarify section 29 of the act relating to marking requirements.

"Section 16 of the bill would amend section 30 of the act by changing the mandatory requirement of establishing internal classification of goods to a discretionary provision; and it would clarify language dealing with multiple applications.

"Section 17 of the bill proposes to rewrite section 32(1) of the act, making several changes and rearranging the language.

"One change is the omission of the italicized words from the following quotation from clause (a): 'on or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers as to the source or origin of such goods or services'.

"This change is parallel to a similar change made in section 2(d) of the act.

"Section 17 of the bill also proposes to amend section 32(2) of the act to correct a typographical error.

"Section 18 of the bill would make amendments in subsections (a) and (b) of section 33 of the act. The amendments to subsection (a) and the opening paragraph of subsection (b) are an improvement in accuracy. The amendment to paragraph (3) of subsection (b) is parallel to amendments to sections 10 and 14. The amendments to paragraphs (5) and (6) of subsection (b) change a limiting date.

"Section 19 of the bill proposes to correct a typographical error in section 35 of the act.

"Section 20 of the bill proposes to amend section 44(b) of the act by adding a reference to a country which extends reciprocal rights to nationals of the United States by law and by revising the language to a more understandable form. This amendment is considered desirable.

"Section 20 of the bill also proposes to amend section 44(e) of the act and effects considerable improvement therein.

"Section 21 of the bill proposes six amendments to section 45 of the act which contains definitions.

"The first of these amendments, to the sixth paragraph of the section, amends the definition of 'applicant' and 'registrant' to include 'predecessor.'

"The ninth paragraph is amended to correct a typographical error in the omission of a comma.

"The 11th paragraph, the definition of service mark, is amended to permit titles of radio and television programs to be registered as service marks even though they advertise goods.

"The amendments to the 15th paragraph amplify the definition of use in commerce with respect to service marks.

"The definition of colorable imitation, in the 17th paragraph of the act, is amended to cancel the word "purchasers," in line with the amendment to section 2(d) of the act.

"The last amendment corrects a typographical error in the final paragraph of section 45."

The chairman of the Subcommittee on Patents, Trademarks, and Copyrights of this committee also received a communication from the Federal Trade Commission, dated November 29, 1961, in which it was proposed that the jurisdiction of the Commission be expanded to permit the Commission to petition for cancellation of registered marks which become, prior or subsequent to registration, the common descriptive name of an article or substance. After consideration, the committee concurs in the judgment of the House Committee on the Judiciary that it is not appropriate at this time to include substantive changes of such nature inasmuch as H.R. 4333 is in large part a house-keeping measure designed to make minimal substantive changes in the trademark law.

AWARD OF A GOLD MEDAL TO GENERAL OF THE ARMY DOUGLAS MACARTHUR

The joint resolution (S.J. Res. 228) authorizing the issuance of a gold medal to General of the Army Douglas MacArthur was announced as next in order.

Mr. PROXMIRE. Mr. President, it is a great honor for me to have reported and now to recommend the passage of Senate Joint Resolution 228, authorizing the issuance of a gold medal to General of the Army Douglas MacArthur. The striking of this medal will not result in any cost to the Government or the United States. The entire cost will be borne by the MacArthur Memorial Foundation.

General MacArthur's service to this country has been so outstanding that every part of the country can very rightfully claim him as its own. However, Wisconsin can, with justifiable pride, assert the highest claim. Milwaukee was the home of his grandfather and father. General MacArthur entered West Point from Wisconsin.

General MacArthur's grandfather, Arthur MacArthur, was born in Glasgow, Scotland, and came to this country as a youth with his widowed mother. He attended Amherst College and Wesleyan University. He was admitted to the New York bar in 1840. He practiced law in Springfield, Mass., and was appointed Judge Advocate of the Western Military District of Massachusetts. When he was 34 years old, he moved with his wife

and 4-year-old son—General MacArthur's father—to Wisconsin. He began the practice of law in Milwaukee, and in 2 years he was city attorney of Milwaukee. In 4 more years he was Lieutenant Governor of Wisconsin. Due to a contested election for the governorship, he served 5 days as Governor of Wisconsin.

President Grant appointed him as Associate Justice of the Supreme Court of the District of Columbia in 1870. He served on the bench for 17 years, resigning in his 73d year in 1888.

General MacArthur's father, Lt. Gen. Arthur MacArthur, spent his boyhood in Milwaukee. When he was 17, he joined the Union Army as a second lieutenant and adjutant of the 24th Wisconsin Infantry. For his gallantry during the battle around Chattanooga, he won the Congressional Medal of Honor. He returned home from the Civil War with the rank of lieutenant colonel, the youngest officer of his rank in the Army. After the war, he entered the Regular Army as a second lieutenant and worked his way up to lieutenant general and became Military Governor of the Philippines.

Gen. Douglas MacArthur was born on an Army post in Little Rock, Ark., on January 26, 1880. His mother took him often to visit the old MacArthur home in Milwaukee, and while his father was away in the Spanish-American War, he and his mother lived in the MacArthur home. General MacArthur was 19 years old when he was appointed to West Point from Wisconsin.

Wisconsin takes pride in the outstanding accomplishments of her soldier-statesman native son. Again I can say I am proud to recommend to the Senate the passage of Senate Joint Resolution 228, which authorizes the presentation by the President of the United States of a gold medal to General of the Army Douglas MacArthur.

Mr. VARBOROUGH. Mr. President, I commend the distinguished Senator from Wisconsin for reporting the joint resolution.

Twice in my lifetime I have had the privilege of serving under the command of Gen. Douglas MacArthur, once, for a year, in the U.S. Military Academy, while he was superintendent, and where I had the privilege of seeing him often as he went about his duties. Again, I spent 9 months under his command in the military occupation of Japan, where I witnessed the beneficent effect of a great proconsul administering our military occupation and governmental policy in that country, and where the people and their property were protected by General MacArthur's wise administration from any unlawful act of any kind by any person, whether in the military service or outside it. General MacArthur, with farsighted vision and wisdom, eased the burden of a defeated people under military occupation.

Gen. Douglas MacArthur has a special place in the hearts of the people of Texas, as he was the valedictorian of the 1897 graduating class at West Texas Military Academy, San Antonio, Tex. This school is now Texas Military Institute and is operated by the Episcopal

Archdiocese of West Texas. Upon each of General MacArthur's recent visits to San Antonio, Texas Military Institute cadets have served as his honor guard. They will be gratified that this recognition of his great service to his country has come to one of America's greatest military commanders in his lifetime.

Twice in my life—the two occasions were separated by approximately 25 years of time—I had the privilege of serving under him. The first occasion was when, as a young general, he returned from Europe, where during World War I he had been Deputy Commander of the famed Rainbow Division. He returned with an outstanding military reputation. The second occasion was after World War II; and at that time I saw him administer the government of Japan in a way which always will be a credit to the American people. It was my duty and responsibility there to serve as military government officer for the 97th Infantry Division, having jurisdiction over one-seventh of the area and population of Japan.

So I think this joint resolution is a most timely one, and I commend the Senator from Wisconsin for reporting it.

Mr. PROXMIRE. I thank the Senator from Texas.

Mr. CHAVEZ. Mr. President, will the Senator from Wisconsin yield?

The PRESIDING OFFICER (Mr. BURDICK in the chair). Does the Senator from Wisconsin yield to the Senator from New Mexico?

Mr. PROXMIRE. I yield.

Mr. CHAVEZ. I remember seeing General MacArthur when he was a young man, at the time when his father was the commander at Fort Selden, one of the posts used in fighting Geronimo and his Apache Indians. Fort Selden has since then been dedicated by the Government as a monument to the United States and to Douglas MacArthur. As a young man, he spent some time there with his father.

Mr. PROXMIRE. I thank the Senator from New Mexico.

Mr. President, I yield the floor.

The PRESIDING OFFICER. If there is no amendment to be proposed, the question is on the engrossment and third reading of the joint resolution.

The joint resolution (S.J. Res. 228) was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, in recognition of the gallant service rendered by General of the Army Douglas MacArthur to his country, the President of the United States is authorized to award to General of the Army Douglas MacArthur, in the name of Congress, an appropriate gold medal. For such purpose the Secretary of the Treasury is authorized and directed to cause to be struck a gold medal with suitable emblems, devices, and inscriptions to be determined by the Secretary.

SEC. 2. The Secretary of the Treasury is authorized and directed to coin and furnish to the MacArthur Memorial Foundation not more than five hundred thousand copies in bronze of such medal, of such size or sizes as shall be determined by the Secretary in consultation with the MacArthur Memorial Foundation. The medals shall be made and

delivered at such times as may be required by the MacArthur Memorial Foundation in quantities of not less than two thousand. The medals shall be considered to be national medals within the meaning of section 3551 of the Revised Statutes.

SEC. 3. The Secretary of the Treasury shall cause such gold medals and such bronze medals to be struck and furnished at not less than the estimated cost of manufacture, including labor, materials, dies, use of machinery, and overhead expenses; and security satisfactory to the Director of the Mint shall be furnished to indemnify the United States for the full payment of such cost.

REMOVAL OF CERTAIN LIMITATIONS WITH RESPECT TO WAR RISK INSURANCE

The PRESIDING OFFICER. The Chair lays before the Senate the pending business.

The Senate resumed the consideration of the bill (S. 2829) to amend title 12 of the Merchant Marine Act, 1936, in order to remove certain limitations with respect to war risk insurance issued under the provisions of such title.

Mr. BARTLETT. Mr. President, I understand—and I have authority to speak for him in this respect—that the Senator from Ohio [Mr. LAUSCHE] no longer interposes objection to this bill.

The PRESIDING OFFICER. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 2829) was ordered to be engrossed for a third reading, read the third time, and passed as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1209 (a) (2) of the Merchant Marine Act, 1936, as amended—

(1) in the first sentence by striking out all beginning with "Provided, however" through "Provided further" and inserting in lieu thereof "Provided"; and

(2) in the second sentence by striking out all beginning with "Provided, however" through "And provided further" and insert in lieu thereof "Provided".

SEC. 2. The amendments made by this Act shall be applicable to war risk insurance coverage attaching after February 1, 1962.

ESTABLISHMENT OF SESQUICENTENNIAL COMMISSION FOR CELEBRATION OF BATTLE OF NEW ORLEANS

Mr. LONG of Louisiana. Mr. President, there are at the desk the amendments of the House of Representatives to Senate Joint Resolution 65. I ask that the Chair lay them before the Senate.

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives the joint resolution from the Senate (S.J. Res. 60) entitled "Joint Resolution to establish the sesquicentennial commission for the celebration of the Battle of New Orleans, to authorize the Secretary of the Interior to acquire certain property within Chalmette National Historical Park, and for other purposes, which were, on page 2, line 11, strike out all after "the" down through line 13, inclusive, and insert "President."; on page 2, line 21, strike out all after "Orleans", over through

"Britain" on page 3, line 2; on page 3, line 10, after "functions", insert "Provided, however, That no employee whose position would be subject to the Classification Act of 1949, as amended, if said Act were applicable to such position, shall be paid a salary at a rate in excess of the rate payable under said Act for positions of equivalent difficulty or responsibility. Such rates of compensation may be adopted by the Commission as may be authorized by the Classification Act of 1949, as amended, as of the same date such rates are authorized for positions subject to said Act. The Commission shall make adequate provision for administrative review of any determination to dismiss any employee"; on page 3, lines 17 and 18, strike out "may, without regard to the laws and procedures applicable to Federal agencies," and insert "may"; on page 4, strike out lines 20 through 22, inclusive, and insert "NHP-CHAL-7008, said Secretary, notwithstanding the proviso in section 3 of said Act, is hereby authorized to acquire the following lands and interests in lands with funds heretofore appropriated and otherwise available for such purpose."; on page 6, after line 20, insert:

SEC. 6. The joint resolution of July 14, 1960 (Public Law 86-650), is amended to read as follows:

"DECLARATION OF POLICY

"SECTION 1. It is hereby declared to be the policy of the Congress to authorize appropriate activities on the part of the Federal Government in celebration of the one hundred and seventy-fifth anniversary of the formation of the Constitution of the United States and to provide a means whereby similar activities by the States and by the people may be encouraged and coordinated in a comprehensive national observance to the end that our citizens may gain a deeper appreciation of the priceless national heritage represented by the Constitution as a living document and a renewed zeal for the perpetuation and advancement of the ideals of government of which it is the embodiment.

"ESTABLISHMENT OF THE COMMISSION

"SEC. 2. (a) For the purpose of carrying out the policy set forth in section 1 of this Act, there is hereby established a commission, to be known as the 'United States Constitution One Hundred and Seventy-fifth Anniversary Commission' (hereinafter referred to as the 'Commission') for the celebration of the one hundred and seventy-fifth anniversary of the existence of the Constitution, and to be composed of twelve Commissioners, as follows: The President of the United States; the President of the Senate and the Speaker of the House of Representatives, ex officio; three persons to be appointed by the President of the United States; three Senators to be appointed by the President of the Senate; and three Representatives, by the Speaker of the House of Representatives.

"(b) Service of an individual as a member of the Commission or employment of an individual by the Commission as an attorney or expert in any business or professional field, on a part-time or full-time basis, with or without compensation, shall not be considered as service or employment bringing such individual within the provisions of sections 281, 283, 284, 434, or 1914 of title 18 of the United States Code, or section 190 of the Revised Statutes (5 U.S.C. 99).

"(c) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

"(d) A person appointed to the Commission in the status of a Member of Congress,

but who thereafter ceases to have such status, shall nevertheless continue as a member of the Commission.

"COMPENSATION OF THE COMMISSION

"SEC. 3. The members of the Commission shall serve without compensation, but they shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

"ORGANIZATION AND STAFF OF THE COMMISSION

"SEC. 4. (a) The Commission shall select a Chairman from among its members.

"(b) The Chairman may appoint an Executive Director, to serve at his pleasure, whose compensation shall be fixed by the Commission.

"(c) The Executive Director, with the approval of the Chairman, may appoint and fix the compensation of such assistants and subordinates as he deems necessary.

"(d) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), but at rates not to exceed \$50 per diem for individuals.

"(e) Neither the civil service laws nor the Classification Act of 1949, as amended, shall apply to any exercise of the authority conferred by subsection (b), (c), or (d) of this section: *Provided, however,* That no employee whose position would be subject to the Classification Act of 1949, as amended, if said Act were applicable to such position, shall be paid a salary at a rate in excess of the rate payable under said Act for positions of equivalent difficulty or responsibility. Such rates of compensation may be adopted by the Commission as may be authorized by the Classification Act of 1949, as amended, as of the same date such rates are authorized for positions subject to said Act. The Commission shall make adequate provision for administrative review of any determination to dismiss any employee.

"(f) Mail matter sent by the Commission as penalty mail or franked mail shall be accepted for mail subject to section 4156 of title 39, United States Code, as amended.

"OFFICE SPACE FOR THE COMMISSION

"SEC. 5. The Secretary of the Interior, after consultation with the Commission, shall make available to it such office space in a building or buildings in the Independence National Historical Park as, in the judgment of the Secretary, it may require for performance of its functions.

"DUTIES OF THE COMMISSION

"SEC. 6. (a) The Commission shall request the cooperation of appropriate officials in all branches, departments, and agencies of the United States in planning ceremonies or other activities in their respective components of the Federal Government in observance of the one hundred and seventy-fifth anniversary of the formation of the Constitution, and all such officials are authorized and requested to consult with the Commission.

"(b) The Commission shall request the appointment by the Governors of each of the fifty States of individuals or committees to consult with the Commission and to assist in coordinating the activities of the Federal Government, the governments of the States, and private individuals and organizations in carrying out the purposes of this Act.

"(c) The Commission shall take appropriate action to encourage, assist, and coordinate activities by municipal, county, and other local governmental units in carrying out the purposes of this Act.

"(d) The Commission shall make its assistance available to public and private schools in planning programs, ceremonies, and other activities, and obtaining written and audiovisual materials for use in such activities in connection with the anniversary

Public Law 87-772
87th Congress, H. R. 4333
October 9, 1962



An Act

76 STAT., 769.

To amend the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (1) of subsection (a) of section 1 of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (60 Stat. 427), as amended, is amended by striking the words "as might be calculated to deceive" and inserting in lieu thereof "as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive"; and by striking the words "or services" from the proviso thereof.

Trademarks.
Registration and
protection.

15 USC 1051.

SEC. 2. Subsection (d) of section 2 is amended by striking the language beginning with the word "confusion", first appearance, and ending with the word "herewith" at the end of said subsection and inserting in lieu thereof the following: "confusion, or to cause mistake, or to deceive: *Provided*, That when the Commissioner determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (i) the earliest of the filing dates of the applications pending or of any registration issued under this Act; or (ii) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (iii) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods in connection with which such mark is registered to the respective persons."

Concurrent reg-
istration.
15 USC 1052.

21 Stat. 502.
33 Stat. 724.
15 USC 81 *note*.

SEC. 3. Section 6 is amended by striking the entire section and inserting in lieu thereof the following:

Unregistrable
matter, dis-
claimer.
15 USC 1056.

"SEC. 6. (a) The Commissioner may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

"(b) No disclaimer, including those made under paragraph (d) of section 7 of this Act, shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services."

Post, p. 770.

SEC. 4. The first sentence of subsection (a) of section 7 is amended by striking therefrom the word "either"; by striking the words "name printed" and inserting in lieu thereof the words "signature placed"; by striking the words "and attested by an assistant commissioner or by one of the law examiners duly designated by the Commissioner," and by striking the words "and a record thereof, together with printed

Registration
certificates.
15 USC 1057.

copies of the drawing and statement of the applicant, shall be kept in books for that purpose" and inserting in lieu thereof the words ", and a record thereof shall be kept in the Patent Office." The second sentence of subsection (a) of section 7 is amended by striking therefrom the word "certificate" and inserting the word "registration" in lieu thereof; by striking therefrom the words "the drawing of"; and by striking the words "the grant of".

Surrender, cancellation, or amendment.

Subsection (d) of section 7 is amended by striking the entire subsection and inserting in lieu thereof the following: "Upon application of the registrant the Commissioner may permit any registration to be surrendered for cancellation, and upon cancellation appropriate entry shall be made in the records of the Patent Office. Upon application of the registrant and payment of the prescribed fee, the Commissioner for good cause may permit any registration to be amended or to be disclaimed in part: *Provided*, That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the Patent Office and upon the certificate of registration or, if said certificate is lost or destroyed, upon a certified copy thereof."

Patent Office records.

Subsection (e) of section 7 is amended by striking the words "certificates of"; by adding an "s" to the word "registration"; and striking the words "a chief of division" and inserting in lieu thereof "an employee of the Office".

Mistakes, correction.

Subsection (f) of section 7 is amended by striking from the first sentence the words ", signed by the Commissioner and sealed with the seal of the Patent Office"; by striking the word "certificate", second occurrence; and by striking the word "certificate", third occurrence, and inserting the word "registration" in lieu thereof.

Registration renewal.
15 USC 1059.

SEC. 5. Section 9 is amended by striking the entire section and inserting in lieu thereof the following:

"SEC. 9. (a) Each registration may be renewed for periods of twenty years from the end of the expiring period upon payment of the prescribed fee and the filing of a verified application therefor, setting forth those goods or services recited in the registration on or in connection with which the mark is still in use in commerce and having attached thereto a specimen or facsimile showing current use of the mark, or showing that any nonuse is due to special circumstances which excuse such nonuse and it is not due to any intention to abandon the mark. Such application may be made at any time within six months before the expiration of the period for which the registration was issued or renewed, or it may be made within three months after such expiration on payment of the additional fee herein prescribed.

"(b) If the Commissioner refuses to renew the registration, he shall notify the registrant of his refusal and the reasons therefor.

"(c) An applicant for renewal not domiciled in the United States shall be subject to and comply with the provisions of section 1(d) hereof."

60 Stat. 427.
15 USC 1051.

Assigned registration, cancellation.
15 USC 1060.

SEC. 6. Section 10 is amended by changing the colon following the word "conducted" to a period and striking the words "*Provided*, That any assigned registration may be canceled at any time if the registered mark is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used"; and striking the sentence "The Commissioner shall keep a separate record of such assignments submitted to him for recording." and inserting in lieu thereof "A separate record of assignments submitted for recording hereunder shall be maintained in the Patent Office."

15 USC 1062.

SEC. 7. Subsection (a) of section 12 is amended by changing the period at the end thereof to a colon and inserting after the colon the

following: "*Provided*, That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference as provided for in section 16 of this Act, the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings." 15 USC 1066.

Subsection (c) of section 12 is amended by striking therefrom the first word of the last sentence and inserting in lieu thereof the words "Marks published under this". 15 USC 1062.

SEC. 8. Section 13 is amended by striking the words "notice of" each occurrence, and by adding at the end thereof the following sentence: "An opposition may be amended under such conditions as may be prescribed by the Commissioner." 15 USC 1063.

SEC. 9. Section 14 is amended by striking said section in its entirety and inserting in lieu thereof the following: Registration cancellation, petition.

"SEC. 14. A verified petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed by any person who believes that he is or will be damaged by the registration of a mark on the principal register established by this Act, or under the Act of March 3, 1881, or the Act of February 20, 1905— 21 Stat. 502. 33 Stat. 724. 15 USC 81 note.

"(a) within five years from the date of the registration of the mark under this Act; or

"(b) within five years from the date of publication under section 12(c) hereof of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905; or

"(c) at any time if the registered mark becomes the common descriptive name of an article or substance, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 4 or of subsections (a), (b), or (c) of section 2 of this Act for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used; or 15 USC 1054, 1052.

"(d) at any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 12 of this Act; or

"(e) at any time in the case of a certification mark on the ground that the registrant (1) does not control, or is not able legitimately to exercise control over, the use of such mark, or (2) engages in the production or marketing of any goods or services to which the certification mark is applied, or (3) permits the use of the certification mark for purposes other than to certify, or (4) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies:

"*Provided*, That the Federal Trade Commission may apply to cancel on the grounds specified in subsections (c) and (e) of this section any mark registered on the principal register established by this Act, and the prescribed fee shall not be required."

SEC. 10. Section 15 is amended by striking "(c) and (d)" in the first paragraph and inserting in lieu thereof the following: "(c) and (e)". 15 USC 1065.

Section 15 is amended by striking "or trade name" from paragraph numbered (4).

SEC. 11. Section 16 is amended by striking therefrom the word "purchasers".

SEC. 12. Section 21 is amended by striking the entire section, and inserting in lieu thereof the following: 15 USC 1071.

Appeals, procedure.

15 USC 1058.

"SEC. 21. (a) (1) An applicant for registration of a mark, party to an interference proceeding, party to an opposition proceeding, party to an application to register as a lawful concurrent user, party to a cancellation proceeding, a registrant who has filed an affidavit as provided in section 8, or an applicant for renewal, who is dissatisfied with the decision of the Commissioner or Trademark Trial and Appeal Board, may appeal to the United States Court of Customs and Patent Appeals thereby waiving his right to proceed under section 21(b) hereof: *Provided*, That such appeal shall be dismissed if any adverse party to the proceeding, other than the Commissioner, shall, within twenty days after the appellant has filed notice of appeal according to section 21(a) (2) hereof, files notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 21(b) hereof. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under said section 21(b), in default of which the decision appealed from shall govern the further proceedings in the case.

"(2) When an appeal is taken to the United States Court of Customs and Patent Appeals, the appellant shall give notice thereof to the Commissioner, and shall file in the Patent Office his reasons of appeal, specifically set forth in writing, within such time after the date of the decision appealed from, not less than sixty days, as the Commissioner appoints.

"(3) The court shall, before hearing such appeal, give notice of the time and place of the hearing to the Commissioner and the parties thereto. The Commissioner shall transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant and any additional papers and evidence specified by the appellee, and in an ex parte case the Commissioner shall furnish the court with the grounds of the decision of the Patent Office, in writing, touching all the points involved by the reasons of appeal.

"(4) The court shall hear and determine such appeal on the evidence produced before the Patent Office, and the decision shall be confined to the points set forth in the reasons of appeal. Upon its determination, the court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent Office and govern the further proceedings in the case.

Civil action.

"(b) (1) Whenever a person authorized by section 21(a) hereof to appeal to the United States Court of Customs and Patent Appeals is dissatisfied with the decision of the Commissioner or Trademark Trial and Appeal Board, said person may, unless appeal has been taken to said Court of Customs and Patent Appeals, have remedy by a civil action if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints or as provided in section 21(a). The court may adjudge that an applicant is entitled to a registration upon the application involved, that a registration involved should be canceled, or such other matter as the issues in the proceeding require, as the facts in the case may appear. Such adjudication shall authorize the Commissioner to take any necessary action, upon compliance with the requirements of law.

"(2) The Commissioner shall not be made a party to an inter partes proceeding under this subsection, but he shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall have the right to intervene in the action.

"(3) In all cases where there is no adverse party, a copy of the complaint shall be served on the Commissioner; and all the expenses of the proceedings shall be paid by the party bringing them, whether the final decision is in his favor or not. In suits brought hereunder, the record in the Patent Office shall be admitted on motion of any

party, upon such terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of any party to take further testimony. The testimony and exhibits of the record in the Patent Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

"(4) Where there is an adverse party, such suit may be instituted against the party in interest as shown by the records of the Patent Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs."

SEC. 13. Section 23 is amended by striking from the last paragraph thereof the words "has begun the lawful use of his mark in foreign commerce and that he". 60 Stat. 435.
15 USC 1091.

SEC. 14. Section 24 is amended by inserting in the second sentence thereof, following the word "time", the following: ", upon payment of the prescribed fee and the filing of a verified petition stating the ground therefor,"; and by inserting in the third sentence following the word "Board" the word "which". 15 USC 1092.

SEC. 15. Section 29 is amended by deleting the following: "under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register established by this Act, shall" and inserting in lieu thereof the following: "in the Patent Office, may"; and by deleting "so to mark goods bearing the registered mark, or by a registrant under the Act of March 19, 1920, or by the registrant of a mark on the supplemental register provided by this Act" and inserting in lieu thereof "to give such notice of registration,". 15 USC 1111.
21 Stat. 502.
33 Stat. 724.
15 USC 81 note.

SEC. 16. Section 30 is amended by striking the word "shall" in the first sentence and inserting in lieu thereof the word "may"; and by striking therefrom all of said section except the first sentence thereof and inserting in lieu thereof the following: "The applicant may file an application to register a mark for any or all of the goods and services upon or in connection with which he is actually using the mark: *Provided*, That when such goods or services fall within a plurality of classes, a fee equaling the sum of the fees for filing an application in each class shall be paid, and the Commissioner may issue a single certificate of registration for such mark." 41 Stat. 533.
15 USC 81 note.

SEC. 17. Subsection (1) of section 32 is amended by striking the entire subsection and inserting in lieu thereof the following: 15 USC 1112.

"Any person who shall, without the consent of the registrant— Infringement.

"(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

"(b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.

shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) hereof, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive."

Paragraph (b) of subsection (2) of section 32 is amended by striking the word "published" and inserting in lieu thereof the word "publisher".

Registered mark.
60 Stat. 438.
15 USC 1115.

SEC. 18. Subsection (a) of section 33 is amended by striking therefrom the words "certificate of" in the first line, and changing "certificate", second appearance, to "registration".

Subsection (b) of section 33 is amended by striking the word "certificate", first appearance, and inserting the word "registration" in lieu thereof and by striking therefrom the word "certificate", second appearance, and inserting in lieu thereof "affidavit filed under the provisions of said section 15".

Ante, p. 771.

Paragraph (3) of subsection (b) of section 33 is amended by striking therefrom the words "has been assigned and"; and by striking therefrom the word "assignee" and inserting in lieu thereof the words "registrant or a person in privity with the registrant".

Paragraph (5) of subsection (b) of section 33 is amended by striking therefrom the word "the" following the words "date prior to" and inserting in lieu thereof the words "registration of the mark under this Act or"; by striking therefrom "(a) or" following the word "subsection"; and by changing the period to "; or".

Paragraph (6) of subsection (b) of section 33 is amended by inserting the words "registration under this Act or" after the word "the", second appearance; by striking therefrom "(a) or" following the word "subsection", first appearance; by striking from the proviso the words "only where the said mark has been published pursuant to subsection (c) of section 12 and shall apply"; by striking the words "the date of" following the words "prior to" in said proviso and inserting in lieu thereof "such registration or such"; by striking therefrom the words "under subsection (a) or (c) of section 12 of this Act"; and by changing the period to "; or".

Ante, p. 771.

15 USC 1117.

SEC. 19. Section 35 is amended by striking "31(1)(b)" and inserting in lieu thereof "32".

International
conventions.
15 USC 1126.

SEC. 20. Subsection (b) of section 44 is amended by striking said subsection in its entirety and inserting in lieu thereof the following:

"(b) Any person whose country of origin is a party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which the United States is also a party, or extends reciprocal rights to nationals of the United States by law, shall be entitled to the benefits of this section under the conditions expressed herein to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of a mark is otherwise entitled by this Act."

Subsection (e) of section 44 is amended by inserting after the word "a" in the second sentence the words "certification or a"; and by striking from said second sentence the words "application for or".

Definitions.
15 USC 1127.

SEC. 21. Section 45 is amended as follows: The sixth paragraph of said section, relating to the definition of "applicant, registrant", is amended by changing "and", second appearance, to ", predecessors,".

The ninth paragraph of said section, relating to the meaning of the terms "trade name" and "commercial name", is amended by inserting a comma between the words "commercial" and "agricultural".

The eleventh paragraph of said section, being the definition of "service mark", is amended by striking the definition in its entirety and inserting in lieu thereof:

"The term 'service mark' means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others. Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor."

The fifteenth paragraph of said section, relating to use in commerce, is amended by changing the period at the end of said paragraph to a comma and adding the words "or the services are rendered in more than one State or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith."

The seventeenth paragraph of said section, relating to the meaning of the term "colorable imitation", is amended by changing "terms" to "term" and deleting the word "purchasers" at the end thereof.

The final paragraph of said section is amended by striking therefrom the word "commence" and inserting in lieu thereof the word "commerce".

Approved October 9, 1962.

468-A
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Public Law 87-718
87th Congress, S. 3475
September 28, 1962

An Act

76 STAT. 663.

To provide further for cooperation with States in administration and enforcement of certain Federal laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in order to avoid duplication of functions, facilities, and personnel, and to attain closer coordination and greater effectiveness and economy in administration of Federal and State laws and regulations relating to the marketing of agricultural products and to the control or eradication of plant and animal diseases and pests, the Secretary of Agriculture is hereby authorized, in the administration and enforcement of such Federal laws within his area of responsibility, whenever he deems it feasible and in the public interest, to enter into cooperative arrangements with State departments of agriculture and other State agencies charged with the administration and enforcement of such State laws and regulations and to provide that any such State agency which has adequate facilities, personnel, and procedures, as determined by the Secretary, may assist the Secretary in the administration and enforcement of such Federal laws and regulations to the extent and in the manner he deems appropriate in the public interest.

Agriculture Dept.
Federal law en-
forcement, cooper-
ation with State
agencies.

Further, the Secretary is authorized to coordinate the administration of such Federal laws and regulations with such State laws and regulations wherever feasible. However, nothing herein shall affect the jurisdiction of the Secretary of Agriculture under any Federal law, or any authority to cooperate with State agencies or other agencies or persons under existing provisions of law, or affect any restrictions of law upon such cooperation.

Approved September 28, 1962.

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